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In the Supreme Court of the United States

October Term, 1964

SAMUEL ESTREICH AND SOLOMON A. FELDMAN, EXECUTORS OF THE ESTATE OF MAY R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

[redacted]

CITATIONS

Crommett, et als., **Phillis H.** v. *City of Portland, et als.*, Sup. Jud. Ct. of Maine 2, 4

David Jeffrey Co. v. *City of Milwaukee*, Sup. Ct. of Wisc. 2, 41

Papadinis, Hrisantry J. v. *City of Somerville, et al.*, Sup. Jud. Ct. of Mass. 2, 31

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Zisook, David, et al. v. *Maryland-Drexel Neighborhood Redevelopment Corporation, et al.*, Sup. Ct. of Ill. 2, 103

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

This supplemental brief is filed, pursuant to Rule 41(5) of the Rules of this Court, in order to present several decisions which were announced too late for inclusion in the Government's brief in chief. Since that brief was filed, the highest courts

of Massachusetts and Wisconsin have upheld the redevelopment laws of those states. *Papadinis* v. *City of Somerville*, Sup. Jud. Ct. of Mass., decided September 21, 1954; *David Jeffrey Co.* v. *City of Milwaukee*, Sup. Ct. of Wisc., decided October 6, 1954. The Supreme Court of Illinois has also handed down two decisions upholding the Urban Community Conservation Act of Illinois and the 1953 Amendments to the Illinois Neighborhood Redevelopment Corporation Law. *People ex rel. Gutknecht* v. *City of Chicago, and Tisook* v. *Maryland-Drexel Neighborhood Redevelopment Corp.*, Sup. Ct. of Ill., both decided September 23, 1954. These four opinions, not referred to in our main brief and not yet reported, are reprinted in the Appendix, *infra*. (We also reprint the opinion in the Maine case of *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Me., decided September 3, 1954 (which is referred to in our main brief) because it has not yet been reported).

At the present time, therefore, the courts of *twenty* states have authoritatively upheld their respective redevelopment statutes.*

Respectfully submitted,

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Of Counsel.

OCTOBER TERM, 1954.

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* This includes the *seventeen* states mentioned at page 16 of our main brief, California (in which the statute was upheld by the District Court of Appeals and the Supreme Court of California denied a hearing), Massachusetts, and Wisconsin.

The California case (incorrectly named in our main brief, fn. 5, p. 17) is *Redevelopment Agency of City and County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 836, 266 P. 2d 105; it is now pending before this Court on petition for a writ of certiorari *sub nom. Van Hoff* v. *Redevelopment Agency of City and County of San Francisco*, No. 87, this Term.

APPENDIX

SUPREME JUDICIAL COURT OF MAINE

September 3, 1954

PHILLIS H. CROMMETT, ET ALS.

v.

CITY OF PORTLAND, ET ALS.

RESCRIPT

WILLIAMSON, J.

On report upon an agreed statement of facts. This is a bill in equity to test the constitutionality of the "Slum Clearance and Redevelopment Authority Law." P. & S. L. 1951, c. 217, sometimes hereinafter referred to as the "Act" or the "1951 Act."

The plaintiffs are ten taxable inhabitants of the City of Portland and bring the bill under R. S. c. 95, s. 4, V XIII (1944). The defendants are the City of Portland, the members of the City Council, the City Treasurer, and five persons "in their purported capacity as Commissioners of the Slum Clearance and Redevelopment Authority."

The plaintiffs in substance seek to restrain and enjoin: (1) payment of $60,000 by the city to the Authority, and (2) the "purported" commissioners from accepting payments from the city and from exercising any powers under the 1951 Act. Further, the plaintiffs pray that the Court decree that

the resolution of the City Council creating the Slum Clearance and Redevelopment Authority and the council order authorizing the $60,000 payment are "illegal and invalid and that (the 1951 Act) is unconstitutional and void and in violation of the Constitution of this State."

A temporary injunction issued and is now in effect. At the hearing on the bill as amended, answer, replication, and an agreed statement of facts, the justice presiding, with the consent of the parties, reported the case to the Law Court for hearing and decision.

The issues are set forth by the plaintiffs in their bill as follows:

> "FOURTEENTH: That Chapter 217 of the Private and Special Laws of Maine, 1951, is unconstitutional and void for the following reasons: (1) it authorizes the taking of private property for private use, in violation of Article I, Section 21 of the Constitution of the State of Maine and the Fourteenth Amendment to the Constitution of the United States; (2) it authorizes an unconstitutional delegation of legislative power, in violation of Article III, Sections 1 and 2, Article IV, Part First, Section 1, and Article IV, Part Third, Section 1, of the Constitution of the State of Maine; (3) it authorizes the loan of the credit of the State, in violation of Article IX, Section 14 of the Constitution of the State of Maine, and (4) it authorizes the expenditure of public funds for

a private use contrary to the law of the State of Maine."

The pertinent constitutional provisions read:

"Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it."
Maine Const. Art. 1, s. 21.

"The legislature...shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution, nor to that of the United States."
Maine Const. Art. IV, Part Third, Section 1.

"...nor shall any State deprive any person of life, liberty, or property, without due process of law;..."
U. S. Const. Amend. XIV.

In considering in detail the 1951 Act and the facts in the instant case, it will be helpful to keep in mind the basic purposes and methods of the slum clearance and redevelopment program well stated in the following words:

"In essence, redevelopment contemplates the acquisition of a slum, blighted or deteriorating area selected in accordance with a general city or town plan, clearing, replanning and making the area available by sale or lease to private and public sources for redevelopment pursuant to a predetermined plan. Since the lo-

cal agency will suffer a loss in acquiring, clearing and replanning the area for its new uses, federal grants are available to help meet the deficit, with the Federal Government absorbing two thirds of the loss. As in the case of local annual contributions required under the United States Housing Act, the local contribution may be and undoubtedly will be in forms other than cash."

The Federal Government and Housing (1952) Wis. L. Rev. 581, 609.

We summarize the 1951 Act and set forth the provisions in which we are particularly interested.

"Section 2. *Findings and declarations of necessity.* It is hereby found and declared that there exist in the city of Portland slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of said city of Portland; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public serv-

ices and facilities; that such areas constitute an economic and social liability, substantially impair or arrest the sound growth of said city of Portland; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and can not be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the elimination of slum conditions or conditions of blight, the acquisition and preparation of land in or necessary to the development of slum or blighted areas and its sale or lease for development or redevelopment in accordance with the master plan and redevelopment plans of said city of Portland and any assistance which may be given by any state public body in connection therewith, are public uses and purposes for which public money may be expended and private property acquired; and that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination."

"Section 3. *Definitions.*

"(g) 'Blighted area' shall mean:

"1. An area in which there is a predominance of buildings or improvements which, by reason of dilapidation, deterioration, age, or obsolescence; or inadequate provision for ventilation,

light, air, sanitation or open spaces; or high density of population and overcrowding; or the existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, is conducive to ill health, or transmission of disease, or infant mortality, or juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

"2. An area which, by reason of the predominance of defective or inadequate street layout; or faulty lot layout in relation to size, adequacy, accessibility or usefulness; or insanitary or unsafe conditions; or deterioration of site or other improvements; or diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title; or improper subdivision or obsolete platting; or mixture of incompatible land uses; or the existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, substantially impairs or arrests the sound growth of the municipality, or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

"(h) 'Slum area' shall mean a blighted area in an extreme state of deterioration and decay.

"(i) 'Redevelopment project' shall mean any work or undertaking:

"(1) To acquire slum areas or blighted areas or portions thereof, including land, structures or improvements not in themselves deteriorated, the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

"(2) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon, and to install, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan.

"(3) To sell, lease or otherwise make available land in such areas for residential, recreational, commercial, industrial or other use or for public use, except for public housing, or to retain such land for public use, except for public housing in accordance with a redevelopment plan. Public housing shall mean housing erected by a local housing authority in accordance with chapter 441 of the public laws of 1949.

"The term 'redevelopment project' may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the prep-

aration of all plans and arrangements for carrying out a redevelopment project."

"Section 4. *Creation of slum clearance and redevelopment authority.*"

"Section 5. *Powers of the Authority.*

"The Authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary to carry out and effectuate the purposes and provisions of this law, including the following powers in addition to others herein granted;

"(d) . . . to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the Authority may deem necessary to prevent a recurrence of slum or blighted areas or to effectuate the purposes of this law; . . .

"(i) To prepare plans and provide reasonable assistance for the relocation of families displaced from a redevelopment project area to permit the carrying out of the redevelopment project, to the extent essential for acquiring possession of and clearing such area or parts thereof."

"Section 6. *Preparation and approval of redevelopment plans.*"

"Section 7. *Disposal of property in redevelopment project.*

"(a) The Authority may sell, lease, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as it may deem to be in the public interest or to carry out the purposes of this law; provided that such sale, lease, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the city council. Such real property shall be sold, leased or transferred at its fair value for uses in accordance with the redevelopment plan, notwithstanding such value may be less than the cost of acquiring and preparing such property for redevelopment. In determining the fair value of real property for uses in accordance with the redevelopment plan, the Authority shall take into account and give consideration to the uses and purposes required by such plan, the restrictions upon, and the covenants, conditions and obligations assumed by the redeveloper of such property; the objectives of the redevelopment plan for the prevention of the

recurrence of slum or blighted areas; and such other matters as the Authority shall specify as being appropriate. In fixing rentals and selling prices, the Authority shall give consideration to appraisals of the property for such uses made by land experts employed by the Authority."

"Section 8. *Eminent Domain.*

The Authority shall have the right to acquire all or any part of the real property, or any interest therein, within the redevelopment project area, by the exercise of the power of eminent domain, whenever it shall be judged by the Authority that the acquisition of said real property or the interest therein is in the public interest and necessary for the public use.

"(a) The necessity for such acquisition shall be conclusively presumed upon the adoption by the Authority of a resolution declaring that the acquisition of the real property, or interest therein, described in such resolution is in the public interest and necessary for the public use and that such real property, or interest therein, is included in an approved redevelopment project under this law. . . ."

"Section 9. *Acquisition and development of undeveloped vacant land.*

"Upon a determination by resolution of the city council that the acquisition and development

of undeveloped vacant land, not within a slum or blighted area, is essential to the proper clearance or redevelopment of slum or blighted areas or a necessary part of the general slum clearance program of the city of Portland, the acquisition, planning, preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the Authority in the manner provided in the foregoing sections. The determination by the city council shall not be made until the city council finds that there is a shortage of decent, safe and sanitary housing in the city of Portland; that such undeveloped vacant land will be developed for predominantly residential uses; and that the provision of dwelling accommodations on such undeveloped vacant land is necessary to accomplish the relocation in decent, safe and sanitary housing in said city of families to be displaced from slum or blighted areas which are to be redeveloped."

"Section 10. *Issuance of bonds.*

"(b) . . . The bonds and other obligations of the Authority, and such bonds and obligations shall so state on their face, shall not be a debt of the city of Portland nor the state, and neither the city of Portland nor the state shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said

Authority acquired for the purposes of this law. . . ."

Sections 11, 12, and 13 relate to bonds of the Authority.

"Section 14. *Conveyance to federal government on default.*"

"Section 15. *Property of authority exempt from taxes and from levy and sale by virtue of an execution.*

"(b) . . . provided that with respect to any property in a redevelopment project, the tax exemption provided herein shall terminate when the Authority sells, leases or otherwise disposes of such property to a redeveloper for redevelopment."

"Section 16. *Cooperation by public bodies.*"

"Section 17. *Grant of funds by the city.*

"The city may grant funds to the Authority for the purpose of aiding the Authority in carrying out any of its powers and functions under this law. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds. . . ."

"Section 18. *Budget and annual report.*"

"Section 19. *Title of purchaser.*"

"Section 20. *Additional conferred powers.*"

Referendum clause.

From the agreed statement we find:

The 1951 Act was duly accepted by the voters of Portland in December 1951. The City Council in February 1952 declared "'that one or more slum or blighted areas exist . . . and that the redevelopment of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents . . .", voted to authorize "a public body corporate and politic to be known as the Slum Clearance and Redevelopment Authority . . .", approved the exercise of the powers granted in the 1951 Act, and appointed Commissioners of the Authority.

It is specifically agreed that "all of the steps required by (the 1951 Act) for the creation of the Slum Clearance and Redevelopment Authority and the entitlement of said Authority to transact business and exercise its powers have been taken and are completed."

Under the Housing Act of 1949 (42 U. S. C. A. s. 1451 et seq.) the Federal Government may "to assist local communities in eliminating their slums and blighted areas and in providing maximum opportunity for the redevelopment of project areas by private enterprise, make temporary and definitive loans to local public agencies for the undertaking of projects for the assembly, clearance, preparation, and sale and lease of land for redevelopment." Capital grants may also be made to enable the local "agencies to make land in project areas available for redevelopment at its fair value for the uses specified in the redevelopment plans; . . ."

The Federal Government has reserved $395,000 for capital grants in Portland, has advanced $14,787 used by the Authority in preparation of preliminary plans and surveys leading to the selection of a project area, designated as the Vine-Deer-Chatham Project Area, and has allocated to the Authority $14,427 for preparation of final plans and surveys of the project.

The capital grant, we read in the agreed statement, "will be in an amount not exceeding two-thirds of the net cost of redeveloping the project provided that the City of Portland will provide the remaining one-third net cost by the provision of 'local grants-in-aid', which may be in the form of (1) cash grants, (2) donations of land and demolition or removal of site improvements, and (3) the provision of parks, playgrounds and public buildings or facilities necessary to support the new uses of the land in said project area in accordance with the redevelopment plan, and that in connection with said Vine-Deer-Chatham project the City of Portland will provide specific 'local grants-in-aid' in the form of cash, donation of land, and certain site improvements, and said City has appropriated a sum of Sixty Thousand ($60,000.00) Dollars as a local cash 'grants-in-aid.' "

After stating findings upon the physical characteristics of the project area "of 5.49 acres which is predominately residential but contains some commercial and industrial uses and some vacant land" disclosed in "recent extensive surveys", the agreement of facts continues with a comparison in recent

periods of certain conditions within the area and within the entire city. The rate is given here for the area in terms of the city average: juvenile delinquency 4.2; tuberculosis 2.3; arrests for drunkenness 3.6; fires 4.4; social welfare contacts 1.5 to 2.7; active recipients of welfare from the city 5.25.

In October 1953 the Authority found, determined and declared the Vine-Deer-Chatham Project Area a blighted area within the 1951 Act.

"That it is the intention of the Slum Clearance and Redevelopment Authority and the City of Portland with the financial assistance of the United States of America to prepare and adopt or cause to be prepared and adopted a redevelopment plan for such project area and (1) to acquire by purchase or eminent domain all of the land, structures, and improvements in the Vine-Deer-Chatham Project Area, including structures and improvements not in themselves deteriorated but excepting certain buildings whose present use conforms to plans for the redevelopment of this area, (2) to clear said Project Area by demolition or removal of existing buildings, structures, streets, utilities and other improvements thereon, and to install, construct and reconstruct streets, utilities, and site improvements considered essential to the preparation of sites for uses in accordance with a redevelopment plan, and (3) to sell, lease, and otherwise make available to individuals and private or public corporations the land in said project area for commercial, industrial, or other use."

The activities set forth above are necessary for the redevelopment of the project area as contemplated by the Authority and the city. The $60,000 authorized to be paid by the city will constitute a portion of the local grants-in-aid. Unless restrained, the City Treasurer will pay and the Authority will expend the authorized $60,000.

The issue on which the case hinges is whether clearance and redevelopment of the blighted area, known as the Vine-Deer-Chatham Project Area, under the 1951 Act is a *public use* within the meaning of our State constitution. If it is a public use, then the expenditure of public money and the taking by eminent domain are constitutional, otherwise not.

We may at the outset eliminate certain of the issues raised in the fourteenth paragraph of the bill, *supra*.

First: If the proposed action passes the hurdle of the State constitutional provision with respect to eminent domain, we need not consider the 14th Amendment to the Constitution of the United States. We may safely say that the provisions of our state constitution are not of a broader scope than the 14th Amendment. The judgment of the highest court of a state upon what should be deemed a "public use" is entitled to the highest respect. *Jones* v. *City of Portland*, 245 U. S. 217, 221 (1917).

Second: There is no unauthorized delegation of legislative power under the 1951 Act. Assuming the constitutional right in the State to expend

public money and to exercise the right of eminent domain, the Legislature may entrust the power to instruments of its choosing, as here the City of Portland, a municipal corporation, and the Slum Clearance and Redevelopment Authority, "a public body corporate and politic, exercising public and essential governmental functions." Section 5 of 1951 Act. *Riche* v. *Bar Harbor Water Co.*, 75 Me. 91 (1883); *Ulmer* v. *Railroad Co.*, 98 Me. 579, 57 A. 1001, 66 L.R.A. 387 (1904); *Brown* v. *Gerald*, 100 Me. 351, 61 A. 785 (1905); *Hayford* v. *Bangor*, 102 Me. 340, 66 A. 731 (1907); *Bowden* v. *York Shore Water Co.*, 114 Me. 150, 95 A. 779 (1915); *Roberts* v. *Water District*, 124 Me. 63, 126 A. 162 (1924); *Smith* v. *Power Co.*, 125 Me. 238, 132 A. 740 (1926).

Third: The complaint that the 1951 Act authorizes the loan of the credit of the state is answered by the provision of the 1951 Act expressly stating otherwise. See Section 10 of 1951 Act, *supra*.

There are certain basic principles upon which all are agreed. First. Taxation must be for a public purpose or use, i.e., for the "benefit of the people," and a taking by eminent domain "for public uses." Maine Constitution, *supra*.

For our purposes it is unnecessary to distinguish "public use" in taxation from "public use" in eminent domain. The latter has been held to be much more restricted in meaning than the former. *Opinion of Justices*, 118 Me. 503, 513, 106 A. 685 (1919). It is apparent that without the right of eminent do-

main the purposes of the Act cannot be carried out. Accordingly, the constitutionality of the Act may be tested by reference only to the principles of the law of eminent domain. Without eminent domain the Act fails; with it, the public use or purpose of taxation is established. Second: "Whether the public exigency requires the taking of private property for public uses is a legislative question, the determination of which by the legislature is final and conclusive. * * * Whether the use for which such taking is authorized is a public use is a judicial question for the determination of the court." *Kennebec Water District* v. *Waterville*, 96 Me. 234, 241, 52 A. 774, 777 (1902); *Ulmer* v. *Railroad Co., supra*; *Brown* v. *Gerald, supra*. Third: Whether a given use of public moneys is public in nature is a matter for determination by the courts. *Private use*: *Allen* v. *Inhabitants of Jay*, 60 Me. 124 (1871) (loan by town to manufacturing concern); *Brewer Brick Co.* v. *Brewer*, 62 Me. 62 (1873) (exemption of manufacturing plant from taxation). *Public use*: *Laughlin* v. *City of Portland*, 111 Me. 486, 90 A. 318 (1914) (Portland municipal fuel yard); *State of Maine* v. *Vahlsing, Inc.*, 147 Me. 417, 88 A. 2nd 144 (1952) (potato tax). Fourth: There is a strong presumption that a statute is constitutional.

In discussing the power of the Legislature, Justice Thaxter said in *State of Maine* v. *Vahlsing, supra*, at page 430:

> "Unless it has clearly exceeded its constitutional powers in so doing, its action must be

sustained. All rational doubts as to the constitutionality of statutes must be resolved in favor of the constitutionality thereof. Although it is the duty of the court to declare acts which transcend the powers of the legislature void, this judicial duty is one of gravity and delicacy and it is only when there are no rational doubts which may be resolved in favor of the constitutionality of the statute that the inherent power of the court to declare statutes unconstitutional should be exercised."

In the words of Justice, later Chief Justice Cornish, in the *Laughlin* case, *supra*, at page 489:

"The court is bound to assume that, in the passage of any law, the Legislature acted with full knowledge of all constitutional restrictions and intelligently, honestly and discriminatingly decided that they were acting within their constitutional limits and powers. That determination is not to be lightly set aside. It is not enough that the court be of the opinion that had the question been originally submitted to it for decision it might have held the contrary view. The question has been submitted in the first instance to the tribunal designated by the Constitution, the Legislature, and its decision is not to be overturned by the court unless no room is left for rational doubt. All honest and reasonable doubts are to be resolved in favor of the constitutionality of the

act. This healthy doctrine is recognized as the settled policy of this court."

See also *Ulmer* v. *Railroad Co., supra*, and *Morris et al. Pet'rs.* v. *Goss*, 147 Me. 89, 83 A. 2d. 556 (1951).

In applying the principles of law to the situation before us, we must keep in mind that the decisive question turns upon the meaning of "public use."

The Legislature has stated there are two public uses; first, the clearance of the "blighted area" as in the instant case, or the slum, and second, the redevelopment of the cleared area, under restrictions designed to prevent the recurrence of the "blight" or slum. This redevelopment may be accomplished by sale or lease of so much of the redeveloped area for private purposes as may not be utilized for public purposes, such as parks or schools. Section 7(a) of the Act, *supra*.

The clearance of the "blighted area" in our view is the use of property for purposes of public health, morals, safety and welfare. The "public use" within the meaning of our constitution lies in the removal of breeding grounds of disease, juvenile delinquency, and other social evils.

> "The elimination of slums can be found to be a direct benefit and advantage to all of the people, to be a matter not readily approached through private initiative but demanding co-ordinated effort by a single authority, to be in line with the purposes of promoting the

public safety, health and welfare for which the Government of the Commonwealth was established, and to require for its successful accomplishment the exercise of the power of eminent domain. It may well be deemed to rise to the dignity of a public service."

Allydonn Realty Corp. v. *Holyoke Housing Authority*, 304 Mass. 288, 23 N. E. 2d 665 (1939).

With the "public exigencies" we are not as a Court concerned. On this condition upon the exercise of the right to take property by eminent domain, the Legislature has spoken. It has declared in substance that regulatory measures designed to control the use of his property by an individual cannot remedy "the menace", and that the clearance and redevelopment of the infected area is necessary.

There is no element of private use in the removal of the conditions of blight. Great public purposes are thereby served and the entire community will benefit. For the moment we pass the question of redevelopment. If there is a "use" within the constitution the use is "public."

It is not necessary, in our view, that an active use be contemplated in a taking by eminent domain. The use may be negative in character. The prevention of evil may constitute a use, and as here a public use. Land may be taken to protect a public water supply, and so here land may be

taken to protect the community against the destructive forces mentioned.

In determining whether a given use is public in nature, we must consider existing conditions. It was well said in the *Laughlin* case, *supra*, at page 492:

> "* * * What could not be deemed a public use a century ago, may, because of changed economic and industrial conditions, be such today. Laws which were entirely adequate to secure public welfare then may be inadequate to accomplish the same results now."

In the recent case of *State of Maine* v. *Vahlsing, Inc.*, *supra*, Justice Thaxter said, at page 426:

> "Admittedly the line of demarcation between a public and a private use is not always easy to draw. Whether a use is public or private is a question of law for the Court. This question must be determined by the application of established legal principles to the then existing facts."

We find nothing in the opinions of our Court that require us to reach a different result. The principle that "public use" in eminent domain means use by the public, or employment by the public, in contrast with public advantage, is well and firmly established. *Opinion of Justices*, *supra*, at page 514; *Paine* v. *Savage*, 126 Me. 121, 136 A. 664 (1927); *Haley* v. *Davenport et als.*, 132 Me. 148, 168 A. 102 (1933).

In general, our cases deal with whether a proposed active use will be for public or private use. For example, a water storage reservoir to increase value and capacity of water powers, *Opinion of Justices, supra*, at page 508; protection of public water supply, *Bowden* v. *York Shore Water Co., supra;* a private logging road, *Paine* v. *Savage, supra;* a drain across a neighbor's land, *Haley* v. *Davenport, supra.*

The application of the "use or employment by the public" rule is less difficult or at least more readily apparent in cases where there is an active use of the property for a given purpose. If active use by the public in the sense that property of a public utility is so used, is an essential requirement under our constitution for the taking of property by eminent domain, then the State is helpless to take necessary action for purposes of public health, morals, safety or welfare. We do not believe that our constitution has so limited the exercise of proper and necessary governmental functions by the Legislature. To this point, namely, the clearance of the blighted area, we find nothing unconstitutional in the 1951 Act.

The determination of whether an area is "blighted" or "slum" under the statute must rest upon facts directly bearing upon the public health, safety, morals or welfare. Consideration of other facts not so grounded, however, does not affect the validity of the finding, if the pertinent facts are in themselves sufficient to show the "blighted" or "slum" condition. The Vine-Deer-Chatham

Project Area is properly a "blighted area" under this test.

Several of the conditions stated in the statute in Clauses 1 and 2 of Section 3(g), *supra*, and particularly in clause 2, do not in our view touch upon a public use. Examples are found in "faulty lot layout", "deterioration of site", "diversity of ownership", "defective or unusual conditions of title", "improper subdivision or obsolete platting", or "mixture of incompatible land uses." Nor are public uses involved in correcting a condition from which an area "substantially impairs or arrests the sound growth of the municipality, or constitutes an economic or social liability." The public use, as we have said, is found in the course of conditions harmful to the public health, safety, morals or welfare.

Further, we do not in this opinion pass upon the constitutionality of Section 9 of the Act, *supra*, relating to the "Acquisition and development of undeveloped vacant land." Our discussion is confined to the validity of the Act with reference to the action here taken and proposed.

After the clearance of the blighted area, the Authority is faced with the question of its future use. We have seen that the redevelopment of the area, with disposal of parts thereof for private use with restrictions to prevent recurrence of the blight, is a second purpose of the Act. Section 2, *supra*.

Taken alone, the redevelopment of a city is not, in our view, a "public use" for which either taxa-

tion or taking by eminent domain may properly be utilized.

However beneficial it might be in a broad sense, it would clearly be unconstitutional for the Legislature to provide for the taking of any area in a city for the purpose of redevelopment by sale or lease for private purposes. Such a proposal would amount to no more than the taking of A's property for sale or lease to B on the ground that B's use would be economically or socially more desirable.

In the instant case redevelopment of the "blighted area" is, in our view, a secondary or minor purpose. The first and main purpose of the Legislature is not to redevelop Portland, but to clear away blighted areas and slums and to prevent their recurrence. If the only uses for which a blighted area or slum may be put when cleared must be uses public in nature by the test of active employment as, for example, parks, playgrounds, schools, municipal buildings and the like, there would be no occasion whatsoever for the 1951 Act. A taking for such public uses requires no consideration of the problems of the slum or blighted area. In brief, the purpose of redevelopment is not the dominant purpose of the Act. Compare *Opinion of Justices, supra,* at page 513, "The dominant purpose here (water storage reservoir) is for private benefit and not for the 'benefit of the people,' and therefore the power of taxation to promote it does not exist", and *Bowden* v. *York Shore Water Co., supra,* in which it was held the real purpose of the taking was to serve a private use of protec-

tion of timberlands from fire, and not a public use of protection of a public water supply.

Property may be taken "for public uses" to carry out the main purpose of the Legislature under the 1951 Act. And further, the facts show that the City Council and Authority have acted and propose to act in good faith to carry out such main purpose. See *Smith* v. *Power Co., supra.*

Plainly, redevelopment of the area is an essential purpose of the Act. It must be recognized that a large part of the area and perhaps as much as is now in private hands will return to private uses after the cleansing process of removal of the infection. From the disposal of the area to private uses the cost of the project will in part be recouped. The Federal Government, the Authority, and the city all have an interest in the future of the area from the viewpoint of total expense.

There will be, however, in the private uses within the area in the future this significant difference from the past. Under the Act it will be the obligation of the Authority to make suitable provision in disposing of the property for the purpose of preventing a recurrence of the evils eliminated. In a limited sense the *public use* of the area will continue. Private uses will be permitted, but only to the extent the purposes of public health, mofals, safety and welfare benefited by the clearance of the area remain unaffected.

Without question, the Authority will be in the business of selling and leasing real estate within the area for private purposes. This situation arises

only as a result of the public uses for which it acquired and cleared the area. The disposal of the property, particularly in light of required restrictions to prevent the recurrence of the evil conditions, is not an unreasonable method of returning to private use property no longer needed in its entirety by the Authority.

The constitutionality of slum clearance and urban redevelopment statutes alike in principle if not in detail with our 1951 Act is upheld by the great weight of authority in other jurisdictions. Only Florida and Georgia have taken a contrary view.

Typical cases are: *Ajootian* v. *Providence Redevelopment Agency*, 91 A. 2d 21 (R. I. 1952) (two judges dissenting); *Gould Realty Company* v. *City of Hartford, et al.*, 104 A. 2d 365 (Conn. 1954); *Veishka et al.* v. *City of Nashua, et al.*, (N. H. 1954); *Belovsky* v. *Redevelopment Authority of Penna.* 357 Pa. 329, 54 A. 2d 277, 172 A. L. R. 953 (1947); *Schneider* v. *District of Columbia*, 117 Fed. Supp. 705 (D. C. 1953); *Fowler* v. *Housing Authority of Portland*, 198 Ore. 205, 256 P. 2d 752 (1952) (includes citations to cases throughout the country); *Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. 2d 884 (1943) (special constitutional provision). *Contra*: *Housing Authority of City of Atlanta* v. *Johnson*, 209 Ga. 560, 74 S. E. 2d 891 (1953); *Adams* v. *Housing Authority of City of Daytona Beach*, 60 So. 2d 663 (Fla. 1952). Miscellaneous: 29 C. J. S. 823, 850, eminent domain, ss. 31, 64, on public use; 18 Am. Jur. 660 et seq 680, eminent domain, ss. 36 et seq. 51, 52; 2 Nichols on

Eminent Domain, ss. 7.2 (3rd Ed. 1950); 2 Yokley Zoning Law and Practice, s. 196 et seq (1953 Ed.) on urban redevelopment; 28 Tulane L. Rev. 96 (1953) (Public Purpose in Urban Redevelopment); 29 B. U. L. Rev. 318 (1949) (Urban Redevelopment); Summaries of Slum Clearance and Public Housing Decisions, Housing and Home Finance Agency, Office of the Administrator, Division of Law (Oct. 1949 and Second Supplement Jan. 1954).

The attack upon the constitutionality of the Slum Clearance and Redevelopment Authorty Law fails.

Bill dismissed without costs.

HERSANTEY J. PAPADINIS v. CITY OF SOMERVILLE, ET AL.[1]

Supreme Judicial Court of Massachusetts

September 21, 1954

SPALDING, J.

These two cases, which were heard together, present the question of the constitutionality of portions of Part IV (entitled "Land Assembly and Redevelopment Projects") of the housing authority law. G. L. (Ter. Ed.) c. 121 §§ 26JJ to 26MM, as appearing in St. 1946, c. 574, § 1, and as amended by St. 1953, c. 647, § 8. In one, the plaintiff Papadinis under G. L. (Ter. Ed.) c. 231A, in-

[1] The companion case is by Lawrence Ardito and others against the same defendants.

serted by St. 1945, c. 582, § 1, seeks a declaratory decree as to the right of the defendant Somerville Housing Authority, hereinafter called the authority, to take his land by eminent domain. The case was heard on a statement of agreed facts and the judge without decision reported the case. The other case is brought by fifteen taxpayers of the defendant city under G. L. (Ter. Ed.) c. 40, § 53, and seeks to restrain the city from expending public funds under a "cooperation agreement" which the city has entered into with the Authority in connection with a proposed slum clearance project. The defendants demurred and the judge after entering an interlocutory decree sustaining the demurrer reported the case. G. L. (Ter. Ed.) c. 214, § 30.

The facts agreed upon in the *Papadinis* case and those admitted by demurrer in the taxpayers' suit are substantially the same. Both cases arise out of a slum clearance project in the Linwood-Joy area so called, in the city of Somerville. In the *Papadinis* case the plaintiff challenges the constitutionality of the statute on the ground that it authorizes the exercise of the power of eminent domain for a nonpublic purpose. The basis for the attack in the taxpayers' suit is that the statute sanctions the expenditure of public funds for private purposes. The question presented by each case is basically the same, namely, whether the proposed project can be classed as a public use or service. If it cannot be, then under our Constitu-

tion there can be no exercise of either the power of eminent domain or the taxing power. *Lowell* v. *Boston*, 111 Mass. 454, 462. *Allydenn Realty Corp.* v. *Holyoke Housing Authority*, 304 Mass. 288, 292, and cases cited.

Section 26JJ, as amended, of Part IV of the housing authority law, after stating that sub-standard, decadent or blighted open areas exist in certain cities and towns of the Commonwealth and that such areas constitute a serious threat to the safety, health, morals and welfare[1] of the residents of the Commonwealth, then declares that "(T)he redevelopment of land not only in sub-standard areas but also in decadent and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and sub-standard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in other communities;

[1] In amplification of this declaration the statute declares that the existence of these areas "contributes substantially to the spread of disease and crime (necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns . . . retards the provision of housing accommodations . . . (and) decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities."

and that the redevelopment of blighted open areas promotes the clearance of sub-standard and decadent areas and prevents their creation and occurrence; that the menace of such sub-standard, decadent or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided . . . (and) that a public exigency exists which makes the acquisition, planning, clearance, rehabilitation or rebuilding of such sub-standard and decadent areas for residential, governmental, recreational, business, commercial, industrial or other purposes . . . public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of this commonwealth . . ."

The authority established under § 26K, as amended, of the housing authority law for the purpose, among other things, of clearing "sub-standard, decadent, or blighted open areas" has found that the Linwood-Joy area was "sub-standard" and "decadent" within the meaning of § 26J.[1] These

[1] A "Sub-standard area" is defined as "any area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals" (§ 26J, as appearing in St. 1946, c. 574 § 1). A "Decadent area" is "any area which is detrimental to safety, health, morals, or welfare because of the existence of buildings which are out of

findings, which are not challenged, are supported by elaborate subsidiary findings which show the area to be that of a typical slum. See *Stockus* v. *Boston Housing Authority*, 304 Mass. 507, 509-512. It also appears that the authority has done all things necessary under the provisions of § 26KK, as amended, for the approval of a plan, hereinafter called the redevelopment plan, for the Linwood-Joy area, and that such plan has been approved in accordance with those provisions. Under the plan the authority is to take all land within the area by eminent domain and thereafter it is to be sold to private parties for redevelopment for private industrial uses. An agreement has been entered into between the city and the authority whereby the authority has agreed to undertake the redevelopment plan and the city has agreed to pay not less than one third of the cost thereof. The balance is to be paid for by grants obtained from the United States under Title I of the Federal housing act of 1949, 63 Sts. at Large, 414; U. S. C. (1952 ed.) Title 42, § 1451 et seq.

The plaintiffs properly do not assail the statute

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repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages, or because many buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space or excessive land coverage, or by reason of any combination of any of the foregoing conditions" (§ 26J, as amended by St. 1953, c. 647, § 11).

on the ground that slum clearance is not a public purpose. If that were the only question involved the case would be governed by *Allydonn Realty Corp.* v. *Holyoke Housing Authority*, 304 Mass. 288. In that case, which involved other provisions of the housing authority law, it was held, after full discussion, that slum clearance was a public purpose for which public funds could be expended. And it was further held that the building of low rent housing units in conjunction with a slum clearance project was a means for the attainment of the primary objective, slum clearance, and was likewise a public purpose. The vice of the statute under consideration, according to the plaintiffs, is that it authorizes the exercise of the eminent domain power and the expenditure of public funds for the acquisition of land which will be sold to private persons. It is true that the redevelopment plan contemplates that after the area is cleared the land will be sold to private persons, and that this course is sanctioned by the statute. § 26 LL. This is the only material respect in which the statute under consideration differs from that in the *Allydonn* case. It is argued, however, that this difference is sufficient to invalidate the statute because it permits the power of eminent domain to be used for private purposes. We do not agree. Of course, that the power cannot be so used is too well settled to require citation of authority. But the plaintiffs' argument, we think, puts the cart before the horse. The plan here, properly interpreted, does not have for its primary objective the taking of the property of one indi-

vidual and turning it over to another, so that slum clearance can be said to be merely incidental to that objective. On the contrary, we are of opinion that the main purpose of the plan is slum clearance and that the disposition of the land by sale thereafter is incidental to that purpose. Once the public purpose contemplated by the statute has been achieved the authority is not obliged to retain the cleared land as unproductive property. *Dingley* v. *Boston*, 100 Mass. 544. *Moore* v. *Sanford*, 151 Mass. 285. *Wright* v. *Walcott*, 238 Mass. 432, 436-437.

In *Dingley* v. *Boston* it was held that land taken in fee by the city of Boston by eminent domain for the purpose of correcting a defective drainage condition which had become a public nuisance was a public use notwithstanding the fact that on completion of the work the nuisance would be abated and the property might then be occupied by private persons. The case of *Moore* v. *Sanford* involved the constitutionality of a statute which authorized the taking by the Commonwealth of certain lands and flats for the improvement of Boston Harbor, and for furnishing better accommodations for the railroad and commercial interests of the city. The statute contemplated that portions of the land taken, when improved, would be sold to private persons for commercial purposes. It was contended that the statute was unconstitutional because it authorized the taking of property for private purposes. The court held that the property was taken primarily for a public purpose and the fact that after this purpose was accomplished the

Commonwealth expected to sell some of the property to advantage did not invalidate the statute. "If lands are taken for a public use and for the benefit of the community, it is not of importance that individuals, or, as in this case, the Commonwealth, may derive incidental advantage therefrom" (151 Mass. 285, 290). "Stating the proposition broadly, the taking in fee of private lands for a public use, the achievement of the aim contemplated . . . and the subsequent sale of the land so taken for private improvement is a recognized and valid exercise of the power of the General Court." *Wright* v. *Walcott*, 238 Mass. 432, 436-437. The great weight of authority has upheld the constitutionality of slum clearance and redevelopment statutes against attack similar to that made here.[1] Indeed, in only two jurisdictions (Florida and Georgia) has the attack been successful. *Adams* v. *Housing Authority of Daytona Beach*, 60 So.

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[1] *Schneider* v. *District of Columbia*, 117 Fed. Sup. 705, 715-719. *Opinion of the Justices*, 254 Ala. 343. *Rowe* v. *Housing Authority of Little Rock*, 220 Ark. 698. *Redevelopment Agency of the City & County of San Francisco* v. *Hayes*, 122 Cal. App. (2d) 777. *Gohld Realty Co.* v. *Hartford*, 141 Conn. 135. *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310. *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49. *In re Slum Clearance*, 331 Mich. 714. *Velishka* v. *Nashua*, — N.H. —, (106 Atl. (2d) 571). *State* v. *Rich*, 159 Ohio St. 13. *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205. *Belovsky* v. *Redevelopment Authority of Philadelphia*, 357 Pa. 329. *Ajootian* v. *Providence Redevelopment Agency of Providence*, — R.I. —, (91 Atl. (2d) 21). *Nashville Housing Authority* v. *Nashville*, 192 Tenn. 103. *Hunter* v. *Norfolk Redevelopment & Housing Authority*, 195 Va. 326. *Commett* v. *Portland*, — Maine — (1954).

(2d) 663 (Fla.). *Housing Authority of Atlanta* v. *Johnson*, 209 Ga. 360.

The further contention in the brief of an amicus curiae that the statute violates the Fourteenth Amendment to the Federal Constitution need not detain us long. In essence the argument is that § 26LL of the statute empowers housing authorities to impose restrictions which might preclude residential use of a cleared slum area which is sold or leased for redevelopment.[2] Hence, it is said, this would prevent persons from living where they choose and would abridge their rights and privileges as citizens. We are of opinion that the point is without merit. We are not disposed to interpret the Fourteenth Amendment as forbidding a State from adopting measures in connection with slum clearance legislation which will prevent or render less likely the reemergence of slum conditions in the cleared area. The Legislature might well have concluded that this would best be accomplished if the area when cleared was devoted thereafter to non-residential uses. We cannot say that this is unreasonable.

It is to be noted that the project here involved was found by the authority to be a "decadent" and

[2] Section 26LL of the Massachusetts housing authority law provides that if the authority sells or leases land acquired for slum clearance "the terms of such sales or leases shall obligate the purchasers or lessees . . . to devote the land to the use specified in the redevelopment plan for said land." The power granted under this provision was in fact exercised, for the plan called for restrictions against residential use for a period of thirty years.

"substandard" area as defined by the statute and in upholding the statute we do so only in so far as it applies to a redevelopment of such areas. Whether the statute would be constitutional as applied to the redevelopment of a "blighted open area" is a question not before us and we make no intimation one way or the other.[1] See *Schneider* v. *District of Columbia*, 117 Fed. Sup. 705, 719-725. Compare *Redevelopment Agency of the City & County of San Francisco* v. *Hayes*, 122 Cal. App. (2d) 777, 790-798.

It follows that in the *Papadinis* case a decree is to be entered declaring that the housing authority has a right to take the plaintiff's property by emi-

[1] "Blighted open area" is defined as "any predominantly open area which is detrimental to safety, health, morals or welfare because it is unduly costly to develop it soundly through the ordinary operations of private enterprise and which is to be developed for predominantly residential purposes by reason of the existence of physical conditions including, but not by way of limitation, the presence of ledge or rock, the existence of unsuitable soil conditions, the necessity of unduly expensive excavation, fill or grading or of the construction of unduly expensive retaining walls, or the necessity of undertaking unduly expensive measures for the waterproofing of buildings or for the drainage of the area or for the prevention of the flooding thereof or for making the same appropriate for sound development; or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, diversity of ownership of plots, inadequacy of transportation facilities or other utilities, or by reason of a substantial change in business or economic conditions or practices, or tax and special assessment delinquencies; or by reason of any combination of any of the foregoing conditions, and which substantially impairs the sound growth of the community" (§ 26J, as amended by St. 1953, c. 647, § 12).

nent domain. In the taxpayers' case the interlocutory decree sustaining the demurrer is affirmed.

So ordered.

STATE OF WISCONSIN: IN SUPREME COURT

No. 111

August Term, 1954

DAVID JEFFREY CO., AN ILLINOIS CORPORATION, APPELLANT

v.

CITY OF MILWAUKEE, A MUNICIPAL CORPORATION, ET AL., RESPONDENTS

[Decided October 6, 1954]

APPEAL from an order of the circuit court for Milwaukee county: ELMER W. ROLLER, Circuit Judge. Affirmed.

Action by plaintiff, David Jeffrey Company, an Illinois Corporation, as property owner and taxpayer of the city of Milwaukee on behalf of itself and others, for a declaratory judgment under sec. 269.56, Stats., to determine the validity and constitutionality of sec. 66.43, Stats., entitled "Blighted Area Law." The defendant, City of Milwaukee, is a municipal corporation, and the defendant, Virgil H. Hurless, is the Comptroller of that city. The defendant, Housing Authority of the City of Mil-

waukee, is a public body corporate and politic, created by the Common Council of the city of Milwaukee and organized and existing by virtue of sec. 66.40, Stats.

The plaintiff seeks a declaration that sec. 66.43, Stats., (Blighted Area Law), and the resolutions, ordinances, acts, contracts and proceedings adopted, executed or taken and the further acts to be taken by the city of Milwaukee thereunder, are illegal and void, in that they violate various provisions of the State and Federal Constitutions. Plaintiff also seeks to enjoin the defendants from further action under the statute. The defendants demurred to the complaint and the trial court by order sustained the demurrer. This appeal is taken from such order.

The legislature by its enactment of sec. 66.43, Stats., found the existence of substandard, unsanitary, deteriorated, slum and blighted areas in cities of the State. It declares the need for the elimination of such areas and the impotency of existing means or methods, public or private to deal effectively with such conditions. It empowers cities of the State to eliminate and redevelop areas of that type and to such end, acquire property by purchase, eminent domain or otherwise, and to hold, improve, sell or lease property so acquired, and to use its credit and expend tax funds for the accomplishment of such purpose.

In substance the amended complaint alleges that acting under the provisions of sec. 66.43, Stats., the

defendant, City of Milwaukee, has engaged in effort with regard to slum clearance and redevelopment of seven areas in that city, one of which is Hillside Neighborhood Redevelopment Area, known also as "Hillside Area"; and that unless the relief sought is granted, the city will proceed to demolish and redevelop that area; and that for such purpose the city of Milwaukee has obtained a grant from the United States of America, and will receive further grants, and will borrow money, and expend public funds, in its endeavor to acquire property in the area for demolition and redevelopment purposes. Specifically, the complaint assails the constitutionality of the Blighted Area Law and the individuality of acts thereunder upon the following bases:

"(a) The acquisition by the exercise of the power of eminent domain of all the land and structures comprising the Hillside area and for the purpose of redevelopment thereof by private corporations and individuals for their private use and profit is in violation of Article I, Section 13 of the Constitution of the State of Wisconsin and the Fourteenth Amendment to the Constitution of the United States of America in that such acquisition and use of such property is for a private as distinguished from a public use and purpose; the acquisition by such power of eminent domain, within said Hillside area, of parcels of vacant land, and of structures which are themselves safe, sanitary and sound, further violates the aforesaid provisions of the Constitutions of the State of Wisconsin and the United

States of America as the acquisition thereof serves or promotes no public use or purpose.

"(b) The appropriation of $500,000 of public funds of the City of Milwaukee and the issuance and sale of $750,000 of general obligation bonds of said City to aid in financing such slum clearance and urban redevelopment projects including the Hillside area are in violation of the provisions of Article VIII, Section 3 of the Constitution of the State of Wisconsin in that the use and application of such funds for such purposes are the giving or lending and expenditures of public funds and credit for private purposes in aid of individuals, associations or corporations.

"(c) The designation of the boundaries, and the determination of given areas as blighted areas by the City of Milwaukee, the determination of types of re-use of any such area, the selection of purchasers or lessees of such property, the fixing of sales and lease prices, and the imposition of restrictions on re-use of the land in any such areas, are in violation of Article IV, Section 1 of the Constitution of the State of Wisconsin in that the said 'blighted area law' as amended, authorizing such actions, does not provide with regard thereto adequate standards and criteria."

Amicus Curiae also raised the question:

"Does adoption by the Housing Authority of the City of Milwaukee of Boundaries of a redevelopment project area under the provisions of 66.43

Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of 'Blight' violate the 'Due Process' clause of Section 1, of the 14th Amendment of the United States Constitution."

Attached to the complaint and made a part thereof by reference are reports, surveys, and studies, including findings, made by several departments of the city government as to blight conditions in the "Hillside Area."

The trial court determined that a justiciable controversy exists and that the entry of a declaratory decree will terminate the uncertainty or controversy giving rise to the proceeding.

A somewhat detailed reference to the enactment of the legislature is necessary to an understanding of the issues involved and the contentions made.

Sec. 66.43, Stats., provides:

Par. 1 provides that the act shall be known and may be cited and referred to as the "blighted area law."

Par. 2 sets forth the legislature's findings and declaration of necessity. It reads:

"It is hereby found and declared that there have existed and continue to exist in cities within the state, sub-standard, insanitary, deteriorated, slum and blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the resi-

dents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime (necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection, and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities, and retards the provision of housing accommodations; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, and any assistance which may be given by cities or any other public bodies in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. * * *"

Par. (2m) provides that there shall be no discrimination as to race, color, creed, or national origin with regards to rights or privileges under the act.

Par. 3 is a glossary.

Par. 4 pertains to powers of cities under the act and reads in part:

"(a) Every city is hereby granted (in addition to its other powers) all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

"1. To prepare or cause to be prepared redevelopment plans and to undertake and carry out redevelopment projects within its corporate limits.

"2. To enter into any contracts determined by the local legislative body to be necessary to effectuate the purposes of this section.

"3. Within its boundaries, to acquire by purchase, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, subdivide, retain for its own use, mortgage, or otherwise incumber or dispose of any such property containing covenants, restrictions, and conditions regarding the use of such property in accordance with a redevelopment plan and such other covenants, restrictions and conditions as it

may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this section; * * *

"4. To borrow money and issue bonds, and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal, state or county government, or other public body or from any sources for the purpose of this section; * * *

(b) Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32 or any other laws applicable to the city.

(c) Notwithstanding any other provision of law, the local legislative body may designate the housing authority of the city, as the agent of the city, to do all acts which would otherwise be performed by the planning commission under this section; and the housing authority is hereby empowered to perform such acts; except, the development of a general plan of the city, which function shall be reserved to the planning commission."

Par. 5 pertains to general and project area redevelopment plans and reads in part:

"(a) The planning commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the city, including the appropriate maps, charts, tables and descriptive, interpretive and analytical matter, which plan is intended to serve as a general framework or guide

of development within which the various area and redevelopment projects under this section may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted and for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"1. Designation by the planning commission of the boundaries of the project area proposed by it for redevelopment, submission of such boundaries to the local legislative body and the adoption of a resolution by said local legislative body declaring such area to be a blighted area in need of redevelopment.

"2. Adoption by the planning commission and approval by the local legislative body of the redevelopment plan of the project area. Such redevelopment plan shall conform to the general plan of the city and shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improve-

ments in the project area, and shall include, without being limited to, a statement of the boundaries of the project area; a map showing existing uses and conditions of real property therein; a land use plan showing proposed uses of the area; information showing the standards of population density, land coverage, and building intensity in the area after redevelopment; a statement of proposed changes, if any, in zoning ordinances or maps and building codes and ordinances; a statement as to the kind and number of site improvements and additional public utilities which will be required to support the new land uses in the area after redevelopment; and a statement of a feasible method proposed for the relocation of families to be displaced from the project area.

"3. Approval of a redevelopment plan of a project area by the local legislative body may be given only after a public hearing conducted by it, and a finding by it that said plan is feasible and in conformity with the general plan of the city. Notice of such hearing, describing the time, date, place, and purpose of the hearing and generally identifying the project area, shall be given by publication for 2 consecutive weeks in a newspaper having general circulation in the city, the last publication to be at least 10 days prior to the date set for the hearing. All interested parties shall be afforded a reasonable opportunity at the hearing to express their views respecting the proposed plan, but the hearing shall be only for the purpose of assisting

the local legislative body in making its determination.

"(c) * * *

"(d) After a project area redevelopment plan of a project area shall have been adopted by the planning commission and approved by the local legislative body, the planning commission may at any time certify said plan to the local legislative body, whereupon said body shall proceed to exercise the powers granted to it in this section for the acquisition and assembly of the real property of the area. * * *"

Par. 6 pertains to transfer, lease or sale of real property in project areas for public and private uses and reads in part:

"(a) After the real property in the project area shall have been assembled, the city shall have power to lease or sell all or any part of said real property (including streets or parts thereof to be closed or vacated in accordance with the plan) to a redevelopment company or to an individual or a partnership for use in accordance with the redevelopment plan. * * *"

"(b) to (g) * * *

Par. 7 provides for housing for displaced families in connection with the redevelopment of blighted areas.

Par. 8 pertains to use-value appraisals.

Par. 9 pertains to the protection afforded cities under redevelopment plans.

to the character of the use. Lewis, Em. Dom. sec. 158. In the same section it is said: 'All the courts, we believe, concur in holding that whether a particular use is public or not, within the meaning of the constitution, is a question for the judiciary'."

In the case of *In re Southern Wisconsin Power Co.* (1909), 130 Wis. 245, 263, 122 N. W. 801, it was said:

"The right of courts to decide whether the purpose is public for which it is proposed to condemn property is undoubted. Such a rule does not preclude the courts from according proper deference to legislative declarations as to what constitutes a public purpose."

In *State ex rel. McClure* v. *Hagerman*, 155 Ohio St. 320, 98 N. E. (2d) 835, it was said:

"Generally, the 'public purpose' for which a municipal corporation can expend money has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose * * * The determination of what constitutes a 'public purpose' for which a municipality may expend money is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpably and manifestly arbitrary and incorrect."

The validity of a statute must be sustained unless it palpably contravenes a provision of the State or Federal Constitutions. This court is bound to give to an act a construction that will avoid constitutional objections to its validity if it will bear such construction. *State* v. *Coub* (1946), 248 Wis. 247, 21 N. W. (2d) 381.

The constitutionality of slum clearance laws has been almost uniformly upheld by courts of last resort in many states. Legislation combining slum clearance and urban redevelopment projects, similar to the blighted area law under consideration, have also been upheld in many jurisdictions. *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205, 256 Pac. (2d) 752; *In Re Opinion of the Justices*, 254 Ala. 343, 48 S. (2d) 757; *Rowe* v. *Housing Authority of City of Little Rock*, 249 S. W. (2d) 551; *People ex rel. Tuohy* v. *City of Chicago*, 399 Ill. 551, 78 N. E. (2d) 285; *Belovsky* v. *Redevelopment Authority of City of Philadelphia*, 357 Pa. 329, 54 A. (2d) 277; *Ajootian* v. *Providence Redevelopment Agency*, 91 A. (2d) 21; *Nashville Housing Authority* v. *City of Nashville*, 192 Tenn. 103, 237 S. W. (2d) 946; *Opinion to the Governor*, 76 R. I. 249, 69 A. (2d) 531; *Herzinger* v. *Mayor & City Council of Baltimore*, 98 A. (2d) 87. Urban redevelopment corporation laws have also been held valid. *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18; *Redfern* v. *Board of Commissioners of Jersey City*, 137 N. J. 356, 59 A. (2d) 641; *Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. (2d) 884; *David Zisook, et al.* v. *Maryland-Drexel Neighborhood Redevelop-*

ment Corporation, et al., — Ill. —; and *People ex rel. John Gutknecht, State's Attorney of Cook County* v. *City of Chicago*, — Ill. —, decided by the Supreme Court of Illinois on September 23, 1954. True, in these cases there was not uniform construction of the term *public use*. Some of these cases involved consideration of programs of a type especially authorized by state constitution provisions. In others, the term *public use* was construed as being interchangeable with *public benefit*. Some involved the same construction that this court has placed upon the term. *Foeller* v. *Housing Authority of Portland* (1953), 198 Ore. 205, 256 Pac. (2d) 752, involved consideration of the validity of a redevelopment law in a jurisdiction committed to the strict construction of *public use*, as exists in this state. In that case it was said:

"* * * the term 'public use', in our constitution, means a more intimate relationship between the public and an item of property which has been acquired under the power of eminent domain than is denoted by terms such as 'public benefit' and 'public utility'. Public use demands that the public's use and occupation of the property must be direct. If someone other than the public uses the property, the fact that the public will share in the benefits does not suffice. It must be the public which will use and occupy the property upon its acquisition. In the present instance it is clear that if the attacked statute is sustained as valid it will be a public body, the Housing Authority, and not a pri-

vate person which will be authorized to acquire the property in the Vaughn Street area. Likewise, upon its acquisition and before its resale or lease, if either ever occurs, it will be a public body, the Housing Authority, which will use, possess, have an interest in or make a profit out of it."

The first question raised by the appellants upon this appeal is: May the city of Milwaukee under the provisions of section 66.43, Wisconsin Statutes, acquire and assemble areas which are blighted for the purpose of clearing such areas and redeveloping them so as to prevent the spread of recurrence of slum conditions or conditions of blight in such areas and, after such acquisition, contract with respect thereto or sell and lease such areas to private persons or redevelopment corporations?

The appellant contends that the acquisition of land by eminent domain as permitted by the Blighted Area Law for blight clearance and redevelopment of blighted areas is not for such *public use* as is contemplated by Article I, sec. 13 of the State Constitution. It maintains that the clearance of areas as permitted by the act does not entail (other than actual occupation for the short length of time involved in destroying the properties) any *public use* as that term is construed in this state. It argues that the mere fact that the city's agents or servants will raze the buildings does not give such project the character of public use. It contends further that the condemnation of *vacant* land in a designated blighted area will serve no *public use*.

The Legislature's enactment stems from the police power of the state. The use of all property is subject to the police power of the state, to be exercised for the protection of the health, safety and general welfare of the public, either directly or through subordinate agencies to whom the exercise of such prerogative may be entrusted. The Legislature's findings and declarations indicate that the health, safety, morals and general welfare of the people are being seriously threatened by the conditions which are found to exist. The act provides a method for the elimination of the conditions and the prevention of their recurrence. Obviously, the Legislature is of a mind that the police power, unaided by the power of eminent domain, is inadequate to attain the results which it desires to accomplish. The Legislature permits the acquisition of property for the purposes enumerated in the statute, and declares that such acquisition is for a public use. While a Legislature's finding that a taking of property which a measure authorizes will be for the public use is not binding upon the courts, the latter will accord respect to the views of the Legislature. As stated in *Smith* v. *Cameron*, 106 Ore. 1, 210 Pac. 719:

"The courts will always enter upon an inquiry concerning the validity of a statute authorizing the exercise of the power of eminent domain with the presumption that a use is public if the Legislature has declared it to be such."

No act of the Legislature can be held unconstitutional unless it is plainly and unquestionably in violation of the will of the people as declared in the fundamental law. When the public nature of the use for which a taking has been authorized by law is disputed, the question, as it presents itself to the courts, is whether the Legislature might reasonably have considered the use public. The presumption is that such use is public if the Legislature has declared it to be such. The decision of the Legislature must be treated with the consideration due to a coordinate department of the government of the state. 18 Am. Jur., Eminent Domain, p. 675, sec. 46.

The determination of what constitutes a public municipal purpose is primarily a function of the legislative body, subject to a review by the courts, and such determination by the legislative body will not be overruled by the courts except in instances where that determination is manifestly arbitrary or unreasonable. *State ex rel. Gordon* v. *Rhoades*, 156 Ohio St. 81, 100 N. E. (2d) 225.

It was clearly within the province of the Legislature to have made the findings appearing in sec. 66.43, Stats. There is no challenge of those findings in this cause, and their verity must be accepted. That there is public need for the elimination of blighted areas and for the prevention of the recurrence of such conditions in cities of the state, is uncontradicted. It appears plain that the controlling motive for the ridding of blight and the assurance of its non-repetition is the safeguarding of the pub-

Par. 10 provides for modification of development plans.

Par. 11 pertains to limitation upon tax exemption.

Par. 12 pertains to financial assistance.

Par. 13 pertains to co-operation and use of city funds.

Par. 14 pertains to limited obligations.

Par. 15 provides in part:

"This section shall be construed liberally to effectuate the purposes hereof and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant."

Par. 16 pertains to the validation of contracts, undertakings, etc., of cities entered into before July 10, 1953, pursuant to previously existing statute regarding blight areas.

STEINLE, J. The specific questions presented for determination are:

May the City of Milwaukee under the provisions of section 66.43, Wisconsin Statutes, acquire and assemble areas which are blighted for the purpose of clearing such areas and redeveloping them so as to prevent the spread or recurrence of slum conditions or conditions of blight in such areas and, after such acquisition, contract with respect thereto

or sell and lease such areas to private persons or redevelopment corporations?

May the City of Milwaukee use its credit or expend tax funds in acquiring blighted areas or portions thereof incidental to the proper clearance and redevelopment of areas where such blight exists?

May the legislature properly delegate to the Common Council of the City of Milwaukee the authority to determine proposed boundaries of a project area proposed for redevelopment, the redevelopment plan of the project area, and the finding by the Common Council after public hearing that such redevelopment plan of a project area is feasible and in conformity with the general plan of the city?

Does adoption by the Housing Authority of the City of Milwaukee of Boundaries of a redevelopment project area under the provisions of 66.43 Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of "Blight" violate the "Due Process" clause of Section 1, of the 14th Amendment of the United States Constitution?

The principal controversy in the case arises out of the provisions of the Blight Area Law granting to cities the power of eminent domain. Both parties agree that the right of eminent domain can be exercised for the taking of private property only

for public use. The underlying consideration in this cause is the character of the use to be made of the property which sec. 66.43, Stats., permits cities to acquire by eminent domain.

Appellants contend that notwithstanding the fact that the public may derive incidental benefits from the application of these statutory provisions, the term *public benefit* is not synonymous with that of *public use*, and that the program authorized by the statute is not for a *public use* as that term has been defined in this state.

The courts are not in agreement as to the tests to be applied in determining whether a use is public. Some courts have gone so far in the direction of a liberal construction as to hold that "*public use*" is synonymous with "*public benefit*", "*public advantage*", "*public interest*", or '*public welfare.*" Other courts have adopted a strict construction holding in effect that "*public use*" means the right of the public to a definite and fixed use of the property appropriated.

Sec. 13, article I of the Wisconsin Constitution, declares: "The property of no person shall be taken for public use without just compensation therefor."

In *Whiting* v. *The Sheboygan & Fona du Lac Railroad Company and others* (1870), 25 Wis. 167, it was held that the "*public use*" which authorizes the exercise of the power of eminent domain implies a possession, occupation and enjoyment of the

land by the public, or public agencies. In declaring such principle, this court there, at pages 194 to 196, said:

"The incidental public benefits or advantages, though in a general sense to be considered, do not, therefore, constitute in the sense of the law a public use, which will justify the interference of the government; and the question is, in what does such use consist in the case of these railroads owned and operated by private corporations? We have seen that certain uses are *per se* public, and that others have been pronounced so by the courts, and, among the latter, railroads. Eminent domain is the right of the government to seize private property for public use, upon payment of just compensation to the owner. It is a power which must be exercised by the government or sovereign, and for the public use only. * * * The '*public use*,' says Judge Cooley, in his excellent treatise on Constitutional Limitations, 531, 'implies a possession, occupation and enjoyment of the land by the public, or public agencies'. * * * It appears, then, that the *public use* consists in the *possession, occupation and enjoyment of the land itself by the public, or public agencies*, and not in any incidental benefits or advantages which may accrue to the public from enterprises of this nature. But the question before us calls for a more precise definition as to how it is that the public may be said to possess, occupy and enjoy the land condemned for

the use of these railroad companies. * * * The public use, therefore, which has been held to justify the application of the doctrine of eminent domain in the case of these railroads owned and operated by private individuals, consists in the fact that the owners cannot, without reasonable excuse, refuse to receive and transport passengers and freight when offered at usual rates, and in the fact that *the state retains the power to regulate and control the franchise, and limit the amount of tolls which it shall be lawful for the owners to charge.* The use consists in these facts, and these alone. And as a man may be said to possess and enjoy the estate of another, the use of which by that other he may regulate and control, so that it shall not be turned to his detriment or disadvantage, so the public, through this reserved power of the state, may be said to possess and enjoy the land condemned for use by these railroad companies. And this is the public use which has been held to justify the exercise of the power of eminent domain in behalf of such corporations, a power which, by the barrier erected by the constitution, requiring payment of full compensation to the owner, is far less susceptible of legislative abuse, and far less dangerous to private right, than the power of taxation."

This court has not departed from its construction of the term "*public use*" announced in *Whiting* v. *The Sheboygan & Fond du Lac Railroad Company and others, supra.*

In Oregon, where the term "*public use*" has been construed as by this court, it was said:

"'The Courts, including this court, which take the opposing view, assert that there is a distinction between a public use and a benefit to the public, and that private enterprises that give employment to many people and produce large quantities of commodities of various kinds are not necessarily public uses and that the term "public use" as used in the constitutions is not synonymous with the term "public benefit" * * *. The idea emphasized by this main line of decisions is expressed by Judge Cooley, thus:

"'The public use implies a possession, occupation, and enjoyment of the land' by the public or public agencies, and it is not enough 'that the public would receive incidental benefits, such as usually spring from the improvement of lands or the establishment of prosperous private enterprises.' *Cooley's Constitutional Limitations.* (7th Ed.) 766". *Smith* v. *Cameron*, 106 Ore. 1, 210 P. 716, 27 A.L.R. 510.

And the court in said case quoted with approval *Lewis on Eminent Domain*, 2nd Ed. sec. 165.

"'The use of a thing is strictly and properly the employment or application of the thing in some manner. The public use of anything is the employment or application of the thing by the public. Public use means the same as use by the public and this it seems to us is the construction the words

should receive in the constitutional provision in question. The reasons which incline us to this view are: First, that it accords with the primary and more commonly understood meaning of the words; second, it accords with the more general practice in regard to taking private property for public use in vogue when the phrase was first brought into use in the earlier Constitutions; third, it is the only view which gives the words any force as a limitation or renders them capable of any definite and practical application.

" 'If the Constitution means that private property can be taken only for use by the public, it affords a definite guide to both the Legislature and the courts. Though the property is vested in private individuals or corporations, the public retain certain definite rights to its use or enjoyment, and to that extent it remains under the control of the Legislature. If no such rights are secured to the public, then the property is not taken for public use and the act of appropriation is void. * * *' "

The Legislature under sec. 66.43, Stats., has made an express finding of the existence of slum and blighted areas in cities of the State. It designates such condition as a serious and growing menace contributing substantially and increasingly to the spread of disease and crime, and requiring maintenance of adequate police, fire and accident protection and other public services. It declares that such existence impairs or arrests the sound growth of cities and retards the provisions of housing ac-

commodations. It finds that the menace of slum clearance is beyond remedy and control solely by the regulatory processes in the exercise of police power and cannot be dealt with by ordinary operations of private enterprises without the aids provided for its enactment. Specifically, by terms of the statute itself, the Legislature has found and declared that the acquisition of property in such areas by eminent domain for the purposes of eliminating the condition and to prevent recurrence, and the removal of structures and improvement of sites therein and the redevelopment thereof according to plan, and assistance given in connection therewith, are *public uses* and *purposes* for which property may be acquired in such manner.

It is within the province of the legislature to declare public use or purpose. In *Schumm* v. *Milwaukee County* (1951), 258 Wis. 256, 265, 45 N. W. (2d) 673, we said, "Primarily, the right to declare what is a public use, is vested in the legislature. 18 Am. Jur. Eminent Domain, p. 675, sec. 46."

It is the function of the court to decide whether the particular use for which the property is sought to be condemned, is public or private. In *The Wisconsin Water Co.* v. *Winans and others* (1893), 85 Wis. 26, 40, 54 N. W. 1003, it was said:

"Of course, the legislature or its agency must, in the first instance, determine whether the use for which it is proposed to make the condemnation is a public use, but such determination is not final as

redevelopment corporation in manner as provided by the statute.

We see no need for comment upon the other point raised by appellant in its challenge under the first question presented for our determination.

The second question raised by appellant is: May the city of Milwaukee use its credit or expend tax funds in acquiring blighted areas or portions thereof incidental to the proper clearance and redevelopment of areas where such blight exists?

Article VIII, sec. 3 reads: "The credit of the state shall never be given, or loaned in aid of any individual, association or corporation."

Appellant again maintains that the redevelopment of a blighted area after its demolition as permitted by the blighted area law, is not for a public use. We have already herein determined that it is clearly for a public use. It is recognized that the powers of eminent domain and taxation are not identical. As was said in *Whiting* v. *The Sheboygan & Fond du Lac Railroad Company and others, supra*, "These powers (eminent domain and taxation) are not identical, though both must be exercised for a public purpose or not at all."

The objects for which money is raised by taxation must be public. In *Brodhead and others* v. *The City of Milwaukee and others*, 19 Wis. 658, this court held:

"The objects for which money is raised by taxation must be public, and such as subserve the common interest and well-being of the community re-

quired to contribute. To justify the court in arresting the proceedings and declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable—so clear and palpable as to be perceptible by every mind at the first blush."

Public funds may be expended by the city for a public purpose. However, expenditure of such funds by the city for a private purpose is unconstitutional. *State ex rel. Larson* v. *Giessel* (1954), 266 Wis. 547, — N. W. (2d) — citing *State ex rel. Thomson* v. *Giessel* (1953), 265 Wis. 207, 60 N. W. (2d) 763; *Heimerl* v. *Ozaukee County* (1949), 256 Wis. 151, 40 N. W. (2d) 546.

By means of the redevelopment plan the city primarily protects itself against the recurrence of blight in affected areas. In other words, it prevents a repetition of hazard to public health, safety, morals and general welfare. The Legislature may unquestionably grant power to the city, and the city may use its power to develop and maintain a program for the accomplishment of such public purpose and for the expenditure of public money in connection therewith.

The city of Milwaukee may lend its credit for the purposes and uses authorized and specified in sec. 66.43, Stats., it being clear that such purposes and uses are public.

Article XI, sec. 3, of the Constitution of Wisconsin expressly recognizes the power of municipal corporations to loan their credit and requires the

lic's health, the public's safety and the public's welfare. When property is acquired for the purposes of eliminating and preventing blighted conditions as provided for by the statute,—that the public will possess, occupy and enjoy the same, is clear. We have no difficulty in concluding that the condemnation of property for the elimination of blight areas and the prevention of the recurrence of blight in such places is for public purpose and public use. We concur with the views expressed in *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 110 N. E. (2d) 778 that:

"We do not believe that anyone will seriously contend that the elimination of slum and other conditions of blight and provisions against their recurrence would not be conducive to the public welfare and a public purpose."

As hereinbefore indicated, there are many courts of last resort which have reached the same conclusion when determining blight and slum clearance laws.

The act is directed against areas, and not individual structures. The public, through the municipality, acquires the land in the area and uses it for its own protection against the menace which threatens. It also, by plan, provides for the redevelopment of the area to assure against repetition of blight. It is as much a public purpose to prevent recurrence of blight as to eliminate it. As stated by

the learned trial court in its opinion of record herein:

"A careful study of the blighted area law plainly indicates that it has as its purpose the elimination of blight conditions and the prevention of the recurrence thereof by the *acquisition* of blighted areas, the *clearance* of such areas by demolition or removal of structures thereon and the administration of such areas in accordance with a redevelopment plan.

"The municipality will acquire the land by purchase or condemnation, and, however acquired, it is the municipality in fact which will own the land in fee simple. Having acquired the land, it is the municipality, the public, which will use the same in the demolition and removal of structures (either directly or through lessees or purchasers), streets, utilities and other improvements thereon. Having acquired the lands, it is the municipality, the public, which will use the lands in the construction of streets, the installation of utilities and other site improvements, all in accordance with an approved redevelopment plan. It is clearly evident that these redevelopment plans in project areas are intended to fit in and conform to the general plan of the city, with particular reference to land uses, improved traffic plans, transportation facilities, parks and other public uses, which characterize its public purpose."

Clearly, such a program is for a public use, not only with respect to the elimination of the blighted condition, but also with respect to effort in preventing recurrence.

Counsel for appellant contends that since the city may only occupy the land for a short duration of time after acquiring it, a taking by condemnation cannot be deemed as for public use. That the property may be in public use or ownership for a short duration of time is not consequential. It is the character of the use and not its extent which determines the question of public use. In *Chicago Land Clearance Commission* v. *White*, 411 Ill. 311, 104 N. E. (2d) 236, it was said:

"Accordingly, the fact that the property may not long remain in the ownership of the Housing Authority does not itself indicate that the use will not be public and that the agency may not be invested with the power of eminent domain. It is the use at which the agency will put the property rather than the length of time for which its ownership will be continued."

The fact that the property may not long remain in the ownership of the city does not in itself indicate that the use will not be a public use and that the city may not be invested with the power of eminent domain in acquiring it. In *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18, the court said:

"The fact that the continued use of the property for public purposes, after the elimination of slum

and blight areas and the redevelopment of such areas has been achieved, is only partially assured and safe-guarded by the act, is wholly immaterial. When such areas have been reclaimed and the redevelopment achieved, the public purpose has been fully accomplished. The fact that the act does not thereafter vouchsafe the continued use of the property acquired for public purposes, does not in any way affect the purposes of the act so as to render the taking of the property a taking for a use or purpose which is not public. The achievement of the redevelopment of slum and blight areas, as defined in the act, in our opinion, constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved."

It is not the object of the statute to merely permit the transfer of property from one individual to another. The sale and leasing of the land to private interests is incidental to the accomplishment of the primary purpose. As was said in *Foeller* v. *Housing Authority of Portland, supra:*

"A resale of property in a redevelopment area may lawfully occur only after the housing authority has no more need for the property. A sale at that time is proper for normally property should not be kept in public ownership but should be restored to the tax rolls when the public has no further need for it. A sale of the property is the final act that takes place concerning the project if the plan actually calls for a sale and is in the nature of a

winding up of the project. Its purpose is to enable the public treasury to recoup its money. Resales cannot offer private persons opportunities for enrichment or exploitation, for the act declares that the property must be sold 'at its fair re-use value' and that 'an authority, upon the sale or lease of such land, shall obligate purchasers to lessees: (1) To use the land for the purpose designated in the development plan; (2) To begin the building of their improvements within a period of time which the authority fixes as reasonable.' The sale is not the primary purpose of the project but is only incidental or ancillary to it."

The statute provides that when the objective of blight elimination and subsequent prevention has been accomplished, to-wit, the area has been demolished and the plan for redevelopment with assurance of no recurrence exists, the city may effectively transfer such of the land that it does not use. As was said in *Belovsky* v. *Redevelopment Authority of City of Philadelphia*, 54 Atl. (2d) 277:

"* * * When, therefore, the need for public ownership has terminated, it is proper that the lands be retransferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the act. It is not the object of the statute to transfer property from one individual to another; such transfers * * * are purely incidental to the accomplishment of the real or fundamental purpose."

In *State ex rel. Thomson* v. *Giessel* (1953), 265 Wis. 185, 60 N. W. (2d) 873, this court said:

"The power to sell lands taken when it is determined that they are no longer needed for public use is latent in every taking, and is very different from a taking of land with a contemporaneous knowledge and purpose that a definite and separable part is not necessary for the public use. * * *"

The fact that incidental private advantages to certain lands are expected to accrue from the construction of the improvement does not derogate from the public nature of the use, if it is constructed for the benefit of the public. Nor does the fact that a by-product of the taking is sold for private use derogate from the public nature of the use. 18 Am. Jur., Eminent Domain, p. 670, sec. 41.

In *Wisconsin River Improvement Company* v. *Pier* (1908), 137 Wis. 325, 118 N. W. 857, this court held that where the public use justified the erection of a dam, and the dam, in addition to serving its public purposes, incidentally caused a surplus of water available for power and for private use, the public use was not thereby impaired or destroyed.

Counsel for the respondents here maintain that:

"The transfer by sale or lease, as we have stated before, does not constitute a private use which can defeat the valid operation of the Blighted Area Law. Such sale or transfer, if made to an individual or public entity, is incidental to the primary purpose of the law, namely, the elimination of slums. However, there may be a transfer to a

'redevelopment company' under Section 66.43 (6), Wis. Stats. A redevelopment company may mean a 'public corporation or body corporate, including a public housing authority', under Section 66.43 (3) (k), Wis. Stats. No matter what transfer is made, whether to a private entity or a public corporation, the use of the land must be 'in accordance with the redevelopment plan' (Section 66.43 (6), Wis. Stats.). It is apparent that the use of the property after the slums have been eliminated is restricted in accordance with the redevelopment plan by the applicable statutes, and this manifestly extends the public use of the lands acquired no matter who may be the ultimate owner or lessee of such lands."

We find ourselves in accord with such expressed view.

After the city has assembled the property it is given power to sell or lease. The statute obliges that the sale or lease be effectuated upon the bases of restrictions assuring against recurrence of blight in the area. The fact that in the redevelopment plan the city may provide that the property should be sold to persons eligible to buy under the act does not in itself demand a holding that the power of eminent domain may not be employed for the acquisition of property. In *Churchill* v. *Grants Pass*, 70 Ore. 283, 141 Pac. 164, the right to employ the power of eminent domain was sustained notwithstanding the following circumstances:

"* * * the proposition is to build and own a road for the benefit of its citizens, that it may when built lease or sell it does not alter the fact that primarily it is a public improvement for public purpose."

The appellant also contends that the condemnation of *vacant* land as proposed by the city of Milwaukee will serve no useful purpose.

As to this attack upon the act, we concur with the view expressed by the trial court in its opinion, that:

"Section 66.43 (4) (a) 3, Stats., grants to every city the power to acquire, by eminent domain, any real property necessary or incidental to a redevelopment project.

"Section 66.43 (3) (i) defines real property to include land.

"Section 66.43 (3) (d) Stats., defines land to include 'bare or vacant land'.

"Here again it is to be noted that the law is directed against slum and blighted *areas*, not individual structures. It must be presumed that the legislature believed that the evils resulting from blight are inherent not in the particular structures but in the entire blighted area as a whole. Consider also that the acts of acquisition and clearance are two purposes in the elimination of the blight problem; there remains a third and important purpose —redevelopment of the area, so vitally essential to its return to the community duly safeguarded from

the danger of blight recurrence. Redevelopment will involve the vacation of streets and alleys, the relocation of streets, the construction of new streets, probably the construction of recreational facilities, more than likely the enlargement of sites for dwelling houses, replatting, restrictions as to future uses of the lands in the area as well as many other changes. The necessity for acquiring vacant parcels and unoffending buildings within a blighted area to effectuate a sound workable plan of redevelopment is obvious.

"Conceivably a large amount of vacant land and a large number of unoffending buildings could be included in a blighted area as that term is defined by the act. (Sec. 66.43 (3) (j) 1, Stats.) It must be presumed that the legislature by necessity and duty acted with full knowledge of the problem in defining the requirements of a blighted area. Its findings are entitled to deference and respect. It is not difficult to perceive that the framers of this law recognized the fact that vacant lands and unoffending structures are commingled with the offending properties. The act of condemnation is frequently harsh; to condemn unoffending property and later lease or sell it for private use is repugnant to the concept of the fundamental right of private property. It is apparent, however, that to single out and except from the provisions of the law vacant land and unoffending structures would render the whole program of blighted area redevelopment futile and ineffective. The problem requires more than a half way measure. Neither is

it to be presumed that those charged with the administration of the law will act unreasonably or arbitrarily."

In *Oliver and Recht* v. *The City of Clairton*, 98 Atl. (2d) 47, wherein the court sustained the constitutionality of the Pennsylvania Urban Redevelopment Law, the court said:

"Redevelopment authorities have the power, therefore, where the conditions prescribed in the act are found to exist, to exercise the right of eminent domain pursuant to a redevelopment proposal even though the redevelopment area may be predominantly open, vacant or unimproved."

We consider that the acquisition of property pursuant to provisions of sec. 66.43, Stats., for the purpose of eliminating blighted areas and preventing the spread and recurrence of blight conditions in such areas, the removal of structures and improvement of sites, the sale or leasing of property for redevelopment incidental thereto and with restrictions to prevent recurrence of blight, are for public uses and purposes for which the power of eminent domain may properly be exercised. We find that the statute, sec. 66.43, in these regards does not contravene the constitutional provisions suggested on this appeal. The city of Milwaukee may acquire and assemble areas to carry out the purposes of the statute, and may contract with respect to property acquired under authority of it, and lease or sell such property to private persons or

Legislature to restrict it. *Clark and Others* v. *The City of Janesville* (1859), 10 Wis. 119.

In Sec. 66.43, Stats., there is no restriction,—in fact there are positive declarations by the Legislature permitting a municipality to appropriate money and to issue bonds in order to carry out the program authorized by the act.

Appellant's counsel argue that the taking of property in a rehabilitated area may include the furnishing of financial assistance. It is not improper for a city to lease or contract for the sale of property, the use of which it does not require for public purposes. The statute contemplates that under the redevelopment plan, contract,—lease or sale,—will include restriction to prevent recurrence of blight in the area.

Counsel for appellant contend that since in the glossary, sec. 66.43 (3) (m), Stats., the state is included as a "public body", and that since sec. 66.43 (13) (a), Stats., authorizes any public body to lend or contribute funds to assist any redevelopment project, the state impliedly is authorized to lend its credit in violation of Article VIII, sec. 3, Wisconsin Constitution. Sec. 66.43 (13) (a) provides:

"To assist any redevelopment project located in the area in which it is authorized to act, any public body may, upon such terms as it may determine: Furnish services or facilities, provide property, lend or contribute funds, and perform any other

action of a character which it is authorized to perform for other purposes."

It is to be noted that appellant does not challenge the provision in sec. 66.43 (12) wherein cities may accept grants or other financial assistance from the federal, *state* and county governments, etc., to carry out the purposes of the law. It seems reasonable that if the state can properly make a grant to the city it may with propriety loan money to the city for the express purposes stated. However, in the event that the state could not properly loan money to the city then under the very provisions of 66.43 (13) (a), it is limited in the assistance that it may extend, to the authority which it possesses under the law. However, it appears that since a public use exists, the loaning of credit by any body eligible to lend aid, would not be for the assistance of any private person or group.

The defendant, city of Milwaukee, may validly lend its credit and expend tax funds for the purposes and uses authorized and specified in sec. 66.43, Stats.

The appellant by its third question presented on this appeal, challenges the validity of the Blighted Area Law on the ground that it is an unconstitutional delegation of legislative power, in that it contravenes provisions of Article VI, sec. 1, which provides: "The legislative power shall be vested in a senate and assembly."

It is axiomatic that the Legislature cannot dele-

gate the power to make laws, to any other authority or body. However, the Legislature may delegate to an administrative agency the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose of a law which the Legislature has enacted. The power of the Legislature to delegate authority to administrative agencies is comprehensively treated in *State ex rel. Wis. Inspection Bureau* v. *Whitman* (1928), 196 Wis. 472, 220 N. W. 929, where Mr. Justice Rosenberry, speaking for the court said:

"The power to declare whether or not there shall be a law; to determine the general purpose or policy to be achieved by the law; to fix the limits within which the law shall operate,—is a power which is vested by our constitutions in the legislature and may not be delegated. When, however, the legislature has laid down these fundamentals of a law, it may delegate to administrative agencies the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose, in the language of Chief Justice Marshall 'to fill up the details', in the language of Chief Justice Taft 'to make public regulations interpreting the statute and directing the details of its execution.' "

Here, by its enactment, the Legislature has declared the policy and fixed the standards for the administration of the law. It has made a finding of necessity. It defines blighted area. It gives to

cities the responsibility of determining the size of an area to be redeveloped; the costs involved and the details of the redevelopment plan, the method and mechanics of clearance, and the determination of future uses. Obviously, the Legislature could not make specific provisions for all of these items, for the very reason that the size, extent and character of the blighted areas, and the plans for redevelopment, differ in each city where the slum and blight condition exists. The Legislature has prescribed general rules and definite standards, but leaves to the city the administration of them. In parallel situation in Oregon, the court, when sustaining the validity of a blight area redevelopment plan in *Foeller* v. *Housing Authority of Portland, Supra*, cited with approval *In Re Opinion of the Governor* (1949), 76 R. I. 249, 69 Atl. (2d) 531, wherein it was said:

" 'We further believe that the act is not objectionable on the ground of improper delegation of legislative power. What shall constitute a blighted area within the meaning of the act is therein described in unmistakable language. The nature and extent of a blighted area must necessarily vary not only in the different cities and towns but also within the same community. All that the legislature can reasonably do in the circumstances is to prescribe a fixed standard and rules of general application adapted to accomplish the purpose of the act, leaving to the respective local authorities the responsibility of ascertaining as a matter of

fact whether there exists in the community a blighted area within the meaning of the act as herein construed that requires redevelopment in the public interests. The determination of that factual question by the municipality is an administrative act and not the exercise of legislative power.'"

Similar comment is found in *Belovsky* v. *Redevelopment Authority of the City of Philadelphia* (1947), 357 Pa. 329, 54 Atl. (2d) 277, 172 A.L.R. 953.

By provisions of sec. 66.43, Stats., the Legislature fixes with precision the type of tract within the boundaries of a city that may be processed under this law. Clearly, it is to be implied from the act itself, that it is not the intention of the Legislature that an area which does not possess the described characteristics shall be dealt with in manner as provided. In its findings the Legislature defines with particularity the distinguishing marks or features peculiar to the area that is denominated as blighted. It describes with certainty the type of structures that must exist in an area for the effective application of the law. It defines blighted area as one in which a majority of the existing structures are residential or in which there is a predominance of buildings or improvements, whether residential or non-residential. It appears to us that the conditions and standards which the Legislature has fixed are definite, adequate and

reasonable. A city's redevelopment plan based upon such considerations is valid.

We are obliged to hold that the power conferred upon cities by sec. 66.43, Stats., is not an unconstitutional delegation of power by the Legislature.

Counsel appearing amicus curiae also has presented a question for our determination herein. It is stated as follows: Does adoption by the Housing Authority of the city of Milwaukee of boundaries of a redevelopment project area under the provisions of 66.43, Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of "Blight" violate the "Due Process" clause of Section 1, of the 14th Amendment of the United States Constitution?

It is contended by counsel that property owners of the particular area project referred to in the complaint were not served with notice of hearing of proceedings before the Housing Authority of the City of Milwaukee in advance of that agency's designation of the boundaries of the project area proposed by it for redevelopment; and that they were afforded no opportunity to be heard with respect to their interests. It is further contended that, to their damage, the property of such owners was designated by the Housing Authority as being blighted, without findings from which appeal can be had.

Counsel challenge the constitutionality of the

blight area law on ground that it denies due process of law by not requiring that the Housing Authority serve notice of hearing upon property owners of an affected area, afford opportunity of hearing and make findings that can be appealed.

It is to be noted that in the procedural steps provided by the Blight Area Law there is no provision for notice of hearing before the Housing Authority. Nor is record of the Housing Authority's deliberations or action from which appeal can be taken, required. However, approval of a redevelopment plan by the Common Council may only be given after public hearing of which notice has been published.

The actions and determinations of the Housing Authority and the Common Council do not, however, constitute an appropriation of the property of owners in an area designated as blighted, so as to offend against the constitutional provisions that "a state may not deprive a person of property without due process of law."

The city authorities merely determine the utility and feasibility of acquisition of property for the public's use as permitted by the statute. The Legislature has unlimited power to take private property for public use, or to authorize it to be taken by the city, upon making compensation, reserving to the property owner the right to contest the question whether the proposed use is a public or private one, and whether the power is to be exercised for the purpose for which it was conferred.

Sec. 66.43, Stats., nowise withholds from property owners of an area designated as blighted, the

protections granted to them by ch. 32, Stats., (Eminent Domain). Ch. 32, Stats., requires a jury's determination of the necessity for the taking of property.

In ruling upon a contention such as presented here, the court in *Zurn* v. *City of Chicago, supra*, said:

"* * * No such notice to the property owners is necessary to comply with the requirements of due process of law. No property is taken in this proceeding under section 42. The property rights of the landowners are in nowise affected. This is merely another of the steps required by the statute authorizing a redevelopment corporation to exercise the power of eminent domain. After such certificate is issued and suit is filed for the taking of property by the exercise of the power of eminent domain, the court, in such suit, will determine for itself whether or not the steps have been taken and the precedent conditions met by the redevelopment corporation authorizing it to exercise such power.

"The court, in any condemnation suit instituted by a redevelopment corporation, will determine whether these conditions precedent to the exercise of the right have been complied with. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain, gives to the property owner the right and the opportunity to be heard upon all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law."

When, for instance a city considers and determines the development of a public building, or park, it is not obliged to give notice of its deliberations regarding such undertaking, to property owners within the area of the contemplated site. However, when it attempts to acquire such property for such use by eminent domain, the owners of the property are entitled to challenge the necessity of the taking as provided in ch. 32, Stats. The steps required to be taken precedent to the right of the exercise of the power are legislative questions. The question as to whether such steps have been taken is judicial.

The failure of the Blighted Area Law to provide notice of hearing or opportunity to appeal from the determinations of the Housing Authority does not constitute a denial of due process of law.

By the Court.—Order affirmed.

THE PEOPLE EX REL., JOHN GUTKNECHT, STATE'S ATTORNEY

v.

THE CITY OF CHICAGO, ET AL.

(Docket No. 33236.—Agenda 45—May, 1954)

Supreme Court of Illinois

Opinion Decided September 23, 1954

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This case presents constitutional issues arising out of the most recent effort of the State to deal

with the problem of urban slums and blighted areas. The Urban Community Conservation Act was adopted by the General Assembly in 1953. It aims at the prevention of slums by the creation of Municipal Community Conservation Boards which are authorized to take steps designed to prevent the spread of slum and blight to new areas. Such a board was appointed for the city of Chicago, and the city council appropriated funds for its use. The validity of the act was challenged upon numerous constitutional grounds in this quo warranto action instituted by the People on the relation of the State's Attorney of Cook County. The defendants, the city of Chicago, its mayor, and the members of the Conservation Board of the city of Chicago, filed a motion to dismiss the complaint which was sustained by the circuit court of Cook County. This direct appeal followed.

The act (Ill. Rev. Stat. 1953, chap. 67½, pars. 91.8-91.16) is concerned with deteriorating urban areas, called conservation areas, which are likely to become slum and blighted areas if their deterioration is not arrested. It describes such areas, provides for the appointment of municipal community conservation boards, and authorizes the boards to designate particular localities as conservation areas. Following the designation of a conservation area the board is authorized, after investigation and hearings, to adopt a conservation plan for the area embodying the steps required to prevent its transition into a slum. The board is authorized to nominate, for appointment by the

presiding officer of the municipality, the members of a conservation community council, composed of residents of the area for each conservation area, whose duty it is to assist in the formulation of the area's conservation plan.

An area conservation plan may include, but is not limited to the following matters: (1) land uses, residential and nonresidential; (2) improvement, alteration, or vacation of major and minor streets and alleys, provision for restricted service access, and off-street parking; (3) locations and easements for public utilities; (4) community facilities; (5) landscaping and site engineering; (6) building restrictions; (7) recommended construction including new buildings, rehabilitation and conversions, demolition of designated structures, and elimination of nonconforming uses; (8) population density, ground coverage, and number of dwelling units recommended; (9) recommended standards of maintenance, and requirements of applicable health and safety ordinances; (10) zoning and/or rezoning required; (11) costs and financing arrangements of public portions of the plan. The plan is required to conform to the comprehensive plan, if any, of the municipality. Ill. Rev. Stat. 1953, chap. 67½, par. 91.12.

After the conservation plan for an area has been approved by the board and by a majority vote of the community council concerned, it is to be submitted to the governing body of the municipality for adoption or rejection. If the plan is adopted, the board is authorized to acquire by purchase,

condemnation or otherwise, any property the acquisition of which is necessary or appropriate for the implementation of the plan, to demolish or remove buildings from the property so acquired and to sell, lease or exchange such property. Ill. Rev. Stat. 1953, chap. 67½, par. 91.13.

Section 7 of the act provides that if, after notice to parties in interest and an opportunity to be heard, an owner of property within the area fails to make such property comply with the minimum standards of applicable municipal ordinances, the board is authorized to apply to the circuit court for an order permitting the corporate authorities to make the necessary repairs, and to collect from the owners the cost of eliminating violations of the ordinances. The cost is made a lien upon the property, subordinate to prior liens, and enforceable by foreclosure as in the case of mortgages or mechanics' liens. Ill. Rev. Stat. 1953, chap. 67½, par. 91.14.

The act is first attacked upon the ground that it authorizes the taking of private property for a private use in violation of section 13 of article II of our constitution. On this point, the act contains an explicit finding and declaration of public policy by the General Assembly that there exist in many urban communities, areas which are "rapidly deteriorating and declining in desirability as residential communities and may soon become slum and blighted areas if their decline is not checked." It is further found and declared that the existence of these areas is detrimental to the

health, safety, morals and welfare of the public, and that the prevention of slums is a public use essential to the public interest. (Ill. Rev. Stat. 1953, chap. 67½, par. 91.9). The weight to be accorded such a legislative declaration has frequently been pointed out. *Cremer* v. *Peoria Housing Authority*, 399 Ill. 579, 588; *People* v. *Chicago Transit Authority*, 392 Ill. 77, 86; *People ex rel. Greening* v. *Bartholf*, 388 Ill. 445, 451; *Hagler* v. *Small*, 307 Ill. 460, 474.

The legislative declaration is buttressed by the Economic Report of the President of the United States, submitted to the Congress on January 28, 1954, which stated: "A successful fight against blight can be waged in these cities only if it is planned and carried forward on a basis sufficiently broad to improve the character of a whole neighborhood. * * * In some cases, urban blight can be corrected only by the total clearance of an area and its subsequent redevelopment; more frequently, however, the need is for selective demolition and rehabilitation, thus conserving and renewing what is still useful in older neighborhoods." Title IV of the recently enacted Federal Housing Act of 1954 makes available grants in aid from the United States to cities not only to eliminate existing slums and blighted areas but also to prevent new slums and blighted areas. Public Law 560, 42 U. S. C. A. 1401 et seq.

Plaintiff does not undertake to dispute the existence of the factual relationship between the prevention of slums and the public welfare upon the

basis of which the General Assembly and the Congress have acted. Rather the argument is that because the act contemplates that properties acquired through the use of eminent domain may be sold or leased for private development, in accordance with the provisions of the conservation plan, the public purpose of the taking is nullified. It is said that in order to constitute a public use the contemplated improvement "must be one which the public to some extent have a right to use and not one which is merely a benefit to the public." *Town of Kingston* v. *Anderson*, 300 Ill. 577; *Gaylord* v. *Sanitary District of Chicago*, 204 Ill. 576.

The sweeping expressions in the cases relied upon, however, have been restricted to the particular factual situations there involved by our decision in People ex rel. Tuohy v. City of Chicago, 394 Ill. 477. Numerous decisions of this court clearly demonstrate that possessory use by the public is not an indispensable prerequisite to the lawful exercise of the power of eminent domain. In discussing a similar contention advanced in an attack upon the validity of the Neighborhood Redevelopment Corporation Law, the court said: "When such areas have been reclaimed and the redevelopment achieved, the public purpose has been fully accomplished. The fact that the act does not thereafter vouchsafe the continued use of the property acquired for public purposes, does not in any way affect the purposes of the act or render the taking of the property a taking for a use or purpose which is not public. The achievement of the rede-

velopment of slum and blight areas, as defined in the act, in our opinion constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved." *Zurn* v. *City of Chicago*, 389 Ill. 114, 129. See also, *Chicago Land Clearance Com.* v. *White*, 2 Ill. 2d 216; *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, 611; *Chicago Land Clearance Com.* v. *White*, 411 Ill. 310, 316; *Cremer* v. *Peoria Housing Authority*, 39 Ill. 579, 589, 590, *People ex rel. Tuohy* v. *City of Chicago*, 394 Ill. 477, 487.

It is also contended that the "line of demarcation between a public and private use in the employment of eminent domain to eliminate slum areas * * must be the elimination rather than the prevention of slums." But we are aware of no constitutional principle which paralyzes the power of government to deal with an evil until it has reached its maximum development. Nor is there force in the argument that if the use of eminent domain in the prevention of slums is permitted "every piece of property within the city or State can be condemned to prevent it from becoming a slum." Legitimate use of governmental power is not prohibited because of the possibility that the power may be abused.

In our opinion, the act does not violate section 13 of article II of the constitution.

Plaintiff also challenges the act as an unconstitutional delegation of legislative power to the Community Conservation Board of Chicago and upon the ground that it is so incomplete, indefinite and

uncertain as to violate due process. The attack here centers upon the provisions relating to the designation of conservation areas and to the formulation of plans for particular conservation areas. Defendants suggest, and we agree, that what is here involved is not, technically speaking, a delegation of legislative authority. The action of the board in designating a conservation area carries with it no legal consequences until a conservation plan for the area becomes effective. And a plan approved by the board does not become effective until it is adopted by the city council. The critical action, which affects the rights of property owners, is thus legislative rather than administrative action. (Cf. Berry v. City of Chicago, 320 Ill. 536, 541.) In this respect the status and functions of the board resemble those of a board of local improvements, a zoning commission or a planning commission. (Ill. Rev. Stat. 1953, chap. 24, pars. 84-6, 73-2, 53-1; cf. Gray v. W. A. Black Co., 338 Ill. 488, at 495.) The objection made, however, may fairly be treated in this quo warranto action as a challenge to the legal existence of the board and its authority to act, upon the ground that the statute fails to describe its duties with sufficient particularity. This objection and the due process objection based upon the asserted indefiniteness and lack of certainty of the statute will be discussed together.

The act defines a "Conservation Area" as "an area of not less than 160 acres in which the structures in 50 per cent or more of the area are residential having an average age of thirty-five years

or more. Such an area is not yet a slum or blighted area as defined in the Blighted Areas Redevelopment Act of 1947, but such area by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors may become such a slum and blighted area." (Ill. Rev. Stat. 1953, chap. 67½, par. 91.10.) Such areas, and their effect upon the public welfare, are thus described in the legislative declaration of policy: "* * * these conservation areas are rapidly deteriorating and declining in desirability as residential communities and may soon become slum and blighted areas if their decline is not checked; that the stable economic and physical development of these areas is endangered by the presence of blighting factors as manifested by progressive and advanced deterioration of structures, by the overuse of housing and other facilities, by a lack of physical maintenance of existing structures, by obsolete and inadequate community facilities and a lack of sound community planning; that as a result and concomitant of the decline of conservation areas, there is a growth of delinquency, crime, and of housing and zoning law violations in such areas, together with an abnormal exodus of families; that the decline of these areas threatens to impair the tax base of such communities and produce the conditions characteristic

of slum and blighted areas which threaten the health, safety, morals, and welfare of the public; that in order to promote and protect the health, safety, morals and welfare of the public it is necessary to provide for the protection of such conservation areas and prevent their deterioration into slum and blighted areas." Ill. Rev. Stat. 1953, chap. 67½, par. 91.9.

It is apparent that the legislative definition attempts to identify and isolate the physical factors which characterize those residential parts of a city which are in an intermediate, transitional stage,—not soundly capable of resisting potential deterioration, but not yet slum areas, either. The task is difficult. The requirements of the definition as to the size of an area and as to the age of the residential structures in it are specific. A floor is provided by the definition of a slum or blighted area which is incorporated by reference from the Blighted Areas Redevelopment Act of 1947, a definition which has been sustained against attack for want of sufficiently specific standards. (People v. City of Chicago, 414 Ill. 600, 614, 615; cf. Zurn v. City of Chicago, 389 Ill. 114, 133; Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 54 Atl. 2d 277; Opinion to the Governor, 69 Atl. 2d (R. I.) 531; Foeller v. Housing Authority of Portland, 256 Pac. 2d (Ore.) 752.) Beyond this, the definition enumerates various blighting factors which may combine to constitute an existing threat of transition into a slum. It does so, in our opinion, with sufficient clarity in view of the subject matter in-

volved. (Cf. Department of Public Works and Buildings v. Lanter, 413 Ill. 581, 590.) Specific degrees of deterioration or dilapidation, precise percentages of obsolescence, or mathematical measurements of the extent of overcrowding of residences and of schools and other community facilities which indicate imminent deterioration cannot be stated, for the combinations which will produce the condition at which the legislation is aimed are highly variable.

Plaintiff argues, however, that the provisions which authorize the board to designate a conservation area are insufficient in that the board is permitted to designate at its will as a conservation area, "every residential section of a community over thirty-five years old and in which the city has failed or refused to enforce its zoning laws or building codes." The statute does not reasonably admit of this construction. From section 3 it is clear that mere age of structures in the area is not conclusive but that in addition, there must be present in the area at the time it is designated a conservation area the various blighting factors enumerated in the definition, or a combination of them, to such an extent that unless the decline is checked the area may soon become a slum.

Section 5 provides that a conservation plan "may include but is not limited to (1) land uses, residential and non-residential; (2) improvement, alteration, or vacation of major and minor streets and alleys, provision for restricted service access, and off-street parking; (3) locations and easements for

public utilities; (4) community facilities; (5) landscaping and site engineering; (6) building restrictions; (7) recommended construction including new buildings, rehabilitation and conversions, demolition of designated structures, and elimination of non-conforming uses; (8) population density, ground coverage, and number of dwelling units recommended; (9) recommended standards of maintenance, and requirements of applicable health and safety ordinances; (10) zoning and/or rezoning required; (11) costs and financing arrangements of public portions of the plan; (12) recommended time table of various stages of the program; (13) any and all other steps needed to carry out the plan. Such plan shall conform to the comprehensive plan, if any, of the municipality." Upon the approval of a plan by the board and by the conservation community council for the area in question, the plan is to be submitted to the governing body of the municipality for adoption or rejection. Only upon adoption by the city council would a plan approved by the Chicago Area Conservation Board become effective, and only then would the board be authorized to take any steps toward implementation of the plan. If the action taken by said council in adopting a conservation plan be deemed unreasonable, oppressive, capricious or discriminatory, resort to the courts is available. Murphy v. Chicago, Rock Island and Pacific Railway Co., 247 Ill. 614, 618; City of Chicago v. Brown, 205 Ill. 568, 569.

It is also argued that the present act is so de-

pendent upon other laws for an understanding of its provisions as to be invalid. It is pointed out that in order to determine whether an area can be designated a conservation area under section 3, the Blighted Areas Redevelopment Act of 1947 must be examined; that section 4 permits a member of a conservation board to also act as a member of a Redevelopment Commission created under the Neighborhood Redevelopment Conservation Law; that section 7 requires owners of property within conservation areas to make their property conform to "minimum standards as set forth in the governing ordinances of the municipality," and that one of the reasons specified by section 3 for designating a conservation area is "illegal use of individual structures." The legislative technique here employed is a familiar one, which has uniformly been held free from constitutional objection. (Zurich General Accident and Liability Ins. Co. v. Industrial Com., 331 Ill. 576, 580; Zeman v. Dolan, 279 Ill. 295, 298, 299; People ex rel. Cant v. Crossley, 261 Ill. 78, 85.) Where portions of one statute are adopted by reference in another, the effect is the same as though the statute or the provision adopted had been incorporated bodily into the act. (People v. Crossley, 261 Ill. 78.) It does not follow that because the statute refers to and adopts parts of other statutes it thereby amends them in violation of section 13 of article IV of the constitution. Zeman v. Dolan, 279 Ill. 295.

The statute is not open to the objection that it

improperly delegates legislative authority, nor are its provisions so indefinite as to violate due process.

Plaintiff argues that the present act includes subjects not contained in its title, in violation of section 13 of article IV. This constitutional provision, repeatedly construed, prohibits the inclusion of more than one subject within an act, and requires that the subject be expressed in the title. The title of this act is "An Act in relation to the conservation of urban residential areas and the prevention of slums and to define the rights, powers and duties of municipalities in connection therewith." Plaintiff asserts that the challenged statute includes provisions for (1) condemnation (sec. 6); (2) zoning (sec. 5); (3) making repairs on residential structures by the municipality (sec. 6); (4) the creation and foreclosure of a lien (sec. 7). The argument advanced is that although the general purpose of the act is to conserve residential areas and to prevent them from becoming slums, there is nothing in the title to indicate an intention to deal with zoning regulations, the repair of dilapidated or hazardous buildings, or the exercise of eminent domain. We disagree, and are of the opinion that each of these matters is germane to the prevention of slum and blighted areas.

The contention that the statute violates section 13 of article IV has no legitimate basis.

The next contention requiring consideration is that the act creates arbitrary classifications of real estate in violation of section 2 of article II of our

constitution and the fourteenth amendment to the Federal constitution. An owner of property in a conservation area is required to comply with a conservation plan. His property may be taken by eminent domain or a lien may be imposed upon it to bring it up to minimum standards. Plaintiff insists that no reasonable basis exists for imposing these requirements upon owners of property in conservation areas and not upon those who live beyond such areas. He argues that if a residence in a conservation area tends to create slum conditions by failing to comply with a conservation plan or with minimum standards, a similar residence outside a conservation area would have the same tendency.

An act is not local or special because it operates in but one place, or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. (People v. City of Chicago, 249 Ill. 304, 323.) The issue, then, is whether or not there is a legitimate basis for a classification which distinguishes between property within conservation areas and other property. The prevention of slum and blighted areas is a public use and a public purpose. The legislature has found that the conditions which it seeks to remedy exist upon an area basis rather than upon the basis of individual structures. It is not suggested that this finding does not accord with the facts. Legislative action taken to meet the evil in the form in which it most clearly exists cannot be said to be

either clearly unreasonable or palpably arbitrary. (Gill v. Boston Store of Chicago, Inc., 337 Ill. 70, 82.). This conclusion is in accord with the slum clearance cases of Foeller v. Housing Authority of Portland, 198 Ore. 205, 256 Pac. 2d 752, 778, and Herzinger v. Mayor and City Council of Baltimore, (Md.) 98 Atl. 2d 87, 94, where like contentions were decided adversely.

The challenged classification is based upon a reasonable and substantial difference in situations bearing a proper relation to the purposes to be attained by the statute.

Finally, plaintiff contends that section 7, which makes the cost of necessary repairs a lien upon the property, authorizes the taking of property without just compensation in contravention of section 13 of article II of our constitution. The trial judge found that section 7 was separable from and could have no effect upon the validity of the rest of the act, and that a decision upon its constitutionality would be premature. Plaintiff directs attention to an allegation in the complaint that those defendants who are members of the Conservation Board of Chicago, "have undertaken to exercise and intend to continue to exercise the powers" conferred upon them by statute and ordinance, and asserts that defendants' motion to strike admitted this allegation. This allegation did not, we think, require the trial judge to pass upon the validity of section 7. The complaint alleges specific action under the statute and the ordinances relative to the

creation and appointment of a Conservation Board and the appropriation by the city of funds for its use, conformably to the act and the appropriation ordinance. It does not charge that the corporate authorities of any municipality have applied to a circuit court for an order permitting them to make improved private property within a conservation area conform to the minimum standards set forth in the governing ordinances of the municipality and to charge and collect from the owners of and persons interested in the property the reasonable cost and expense of making the repairs and improvements necessary to bring the property up to the minimum standards of the ordinance. In the absence of such allegations, the trial judge did not err in refraining from determining the validity of section 7, which we agree is clearly separable from the other provisions of the act.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

DAVID ZISOOK, ET AL.

v.

MARYLAND-DREXEL NEIGHBORHOOD REDEVELOPMENT CORPORATION, ET AL.

(Docket No. 33233—Agenda 44—May, 1954)

Supreme Court of Illinois

Opinion decided September 23, 1954

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

Plaintiffs, David and Tybe Zisook, challenged the constitutionality of the 1953 amendments to the Neighborhood Redevelopment Corporation Law by their complaint in the circuit court of Cook County, which sought to enjoin defendants, Maryland-Drexel Neighborhood Redevelopment Corporation, the city of Chicago, and the members of the Neighborhood Redevelopment Commission of the City of Chicago, from taking any action, incurring any obligations, or expending any funds under the authority of those amendments. Defendants' motions to strike the complaint, as amended, and to dismiss the cause were sustained. Plaintiffs elected to stand on their amended complaint, and appeal directly from a decree dismissing the action.

Plaintiffs are residents and taxpayers of the city of Chicago. The Neighborhood Redevelopment Commission was appointed under the Neighborhood

Redevelopment Corporation Law, and the defendant Maryland-Drexel Neighborhood Redevelopment Corporation was formed on October 23, 1953, under that law. (Ill. Rev. Stat. 1953, chap. 32, pars. 550.1 *et seq.*) Maryland-Drexel Neighborhood Redevelopment Corporation is authorized by its charter to redevelop only "conservation areas" and not "slum and blighted areas." It filed with the Neighborhood Redevelopment Commission of the city of Chicago an application for approval of a development plan and for a certificate of convenience and necessity. In its application it stated that it desired to redevelop an area in Chicago bounded by Cottage Grove Avenue on the west, Drexel Avenue on the east, Fifty-fourth Street on the north and Fifty-fifth Street on the south; that this development area was not yet a slum and blighted area but would become such unless redeveloped; that the area was a "Conservation Area," within the meaning of the Neighborhood Redevelopment Corporation Law, as amended, and was in need of redevelopment and conservation. It further stated in its application that it would exercise the right of eminent domain, if and when necessary to the proposed redevelopment plan, upon obtaining written consent to the development plan from the owners of 60 percent or more of the area of land within the development area, and that it did not propose either to purchase, or to secure options to purchase, 60 percent or more in area of the land within the development area.

The Redevelopment Commission ordered that the application be docketed in its conservation docket as Conservation Application No. 1, and that the commission proceed upon the application in accordance with the provisions of the Neighborhood Redevelopment Corporation Law, as amended. On December 11, 1953, the city council of Chicago appropriated $1000 for the expenses of the Redevelopment Commission in processing and proceeding upon applications for redevelopment of "conservation areas."

The constitutionality of the Neighborhood Redevelopment Corporation Law of 1943 was sustained in *Zurn* v. *City of Chicago*, 389 Ill. 114 (1945). The scheme of the statute is set forth in that case and need not be repeated here. In 1953, the General Assembly amended the law in several material respects. Amendments to section 3-4 extended the definition of "Development Plan" to include a plan for the redevelopment of a "Conservation Area," defined in section 3-12 as "an area in which the structures if fifty percent or more of the area are residential having an average age of thirty-five years or more. Such an area is not yet a Slum or Blighted Area as defined in the Blighted Areas Redevelopment Act of 1947, but such area by reason of dilapidation, obsolescence, or deterioration, of illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout or any

combination of these factors may become such a Slum and Blighted Area."

Section 42 (1) (c) originally required as a prerequisite to the institution of condemnation proceedings that a development corporation should have acquired, by purchase or options, 60 percent or more in area of the land within its development area. The 1953 amendments permit, as an alternative prerequisite, proof that the owners of 60 percent or more in the area of land within the development area have assented to and agreed to be bound by the terms of the development plan of the redevelopment corporation as to themselves and their property. Sections 19, 30 and 31, providing for appeal to the circuit court and to the Appellate or Supreme Court were repealed in 1949, effective January 1, 1950, and section 30.01, providing for judicial review pursuant to the Administrative Review Act, was added. (Laws of 1949, p. 637.) And in 1953 the title of the act was broadened to include the prevention and conservation of slum and blight areas.

Plaintiffs contend that because of these material changes in the statute, our decision in the *Zurn* case is not controlling. They argue first that the 1953 amendments to the Neighborhood Redevelopment Corporation Law unlawfully delegate legislative powers to municipal Neighborhood Redevelopment Commissions without prescribing standards or rules to govern their determinations, and are so vague and indefinite as to threaten a denial of due

process of law. The core of this contention is in the attack made upon the definition of "Conservation Area" in section 3-12. This definition differs from the definition of a "Conservation Area" in section 3 of the Urban Community Conservation Act in that the conservation area there involved must not be less than 160 acres. That definition also includes two additional factors not mentioned in the present act: "decline of physical maintenance" and "lack of community planning." In *People ex rel. Gutknecht* v. *City of Chicago*, No. 33236, decided this day, we have held that the definition of "Conservation Area" in the Urban Community Conservation Act is not vulnerable to constitutional attack on the ground that it fails to prescribe adequate standards and guides. While the reasons there stated apply with like force to the definition of "Conservation Area" in the statute here involved, a further word is appropriate.

In the act now before us, and in the Urban Community Conservation Act, the General Assembly provided for the creation of agencies which are designed to check the decline of urban areas into slums. The Urban Community Conservation Act contemplates action by governmental agencies. This act authorizes a pattern of action by private agencies, called redevelopment corporations, under governmental supervision. The pattern of action which the amended statute provides for the prevention of slums has been held valid when applied to the elimination of slums. *Zurn* v. *City of Chicago*, 389 Ill. 114.

In neither case has it been questioned that urban areas exist which are deteriorating into slums; nor has it been suggested that the existence of such areas is not a legitimate governmental concern. Both attacks have centered upon the alleged inadequacy of the legislative effort to capture the elusive characteristics of the areas with which it is dealing. Here it is argued, with respect to each of the distinguishing attributes which the statutory definition includes, that it is not stated "how much dilapidation," "how much obsolescence," and so forth, is required. The point would have significance if the techniques of the accountant were applicable. But the combinations of factors which produce the result at which the legislation is aimed cannot be appraised with that degree of precision. The situation here is like that presented in *Department of Public Works and Buildings* v. *Lanter*, 413 Ill. 581, in that the multitude of varying conditions to which the legislation is to apply makes mathematical certainty impossible in the fixing of standards. There an act was sustained which authorized the Department of Public Works to designate highways as freeways, and to limit access to them "when the safety and convenience of highway traffic will be promoted and the public interest subserved thereby." The arguments there advanced are applicable here.

Plaintiffs also argue that under section 24, as amended to cover conservation areas, the Redevelopment Commission is vested with unlimited discretion as to the size of a redevelopment area,

which, in Chicago, shall not be "less than two city blocks nor more than 160 acres, * * * unless the Redevelopment Commission, in the interests of the orderly Redevelopment of a Slum and Blight or Conservation Area, shall * * * authorize a reduction or increase of the Development Area." Reading this provision literally, plaintiffs say that the commission is empowered to reduce a development area to but a single structure or to increase it by any number of blocks it chooses.

The 1953 amendments added the words "or Conservation" to the quoted portion of section 24 and increased the maximum size of a redevelopment area from 80 to 160 acres. Apart from these changes, the section remains the same as when its validity was sustained in *Zurn* v. *City of Chicago*, 389 Ill. 114. It may be observed that in the sentence which follows the quoted provision the General Assembly has explained the meaning of its use of the words "in the interests of the orderly Redevelopment of a Slum and Blight or Conservation Area" as follows: "It shall be in the interest of the orderly Redevelopment of a Slum and Blight or Conservation Area to increase or diminish the Development Area herein limited whenever the Development Areas of two or more Neighborhood Redevelopment Corporations operating or to operate in the same locality shall not encompass an intervening area or less than two city blocks, and the Redevelopment Commission in such instances shall by rule, pursuant to paragraph 2 of Section 25 of this Act, prescribe the conditions under which con-

tiguity, and the extent thereof, shall be mandatory of the two or more Development Areas." It is manifest that Neighborhood Redevelopment Corporations have not been granted unfettered discretion with respect to the size of a redevelopment area but, on the contrary, are governed by precise standards.

Plaintiffs' next contention is directed at the definition of a "Development Plan." Section 3-4 defines at considerable length a development plan, enumerating fourteen requirements which may be included. Of these, twelve are for all practical purposes the same as those permissible in a conservation plan under the Urban Community Conservation Act. (Ill. Rev. Stat. 1953, chap. 67½, par. 91.12.) Attention is directed to the opening portion of section 3-4 stating that a development plan "may include but is not limited to" the fourteen items set forth with particularity. From this, plaintiffs make the bald assertion that there are no limitations whatever upon the kind of development plan for a conservation area which may be accepted and approved by the commission. Section 17, however, describes in great detail the requirements of a development plan. Section 3-4, as amended, defines a development plan far more fully than did the original definition which was summarily held free from the same attack now made. (*Zurn* v. *City of Chicago*, 389 Ill. 114, 133.) The contention is without merit.

Relying upon *Chicagoland Agencies, Inc.* v. *Palmer*, 364 Ill. 13, plaintiffs urge that the failure of

the statute to prescribe the qualifications required of members of the Redevelopment Commission renders the law unconstitutional. Section 4 of the law (Ill. Rev. Stat. 1953, chap. 32, par. 550.4) provides that a redevelopment commission shall consist of from three to five members, who are to be appointed by the mayor, with the advice and consent of the city council. Each member of the commission shall hold office for a term of two years. Vacancies are to be filled by appointment by the mayor, again with the advice and consent of the city council. No person holding stocks or mortgages in any Neighborhood Redevelopment Corporation, or who is in any other manner directly or indirectly pecuniarily interested in such corporation, or in the development undertaken by it, may be appointed as a member of, or be employed by, the Redevelopment Commission to whose supervision and regulation such corporation is subject. If any such member or employee voluntarily becomes so interested, his office or employment becomes vacant, *ipso facto*. Members or employees, who become so interested otherwise than voluntarily, are given ninety days to divest themselves of such interests, and upon their failure so to do their offices or employments become vacant. Members of the commission receive salaries fixed by the city council.

Although section 4 was not changed by the 1953 amendments, the question raised here, not being mentioned in the briefs or the opinion in the *Zurn* case, is open for consideration.

Plaintiffs point to no constitutional provision

which requires that affirmative qualifications be affixed to an office such as this. There is none. An office created by statute may be filled in the manner the legislature prescribes. (*Groves* v. *Board of Education of the City of Chicago*, 367 Ill. 91; *People ex rel. Ahern* v. *Bollam*, 182 Ill. 528; *People ex rel. Akin* v. *Loeffler*, 175 Ill. 585. Reference to *Department of Finance* v. *Cohen*, 369 Ill. 510, 515, makes it clear that the basis of decision in the *Chicagoland Agencies* case was a lack of adequate standards, and not some supposed requirement that the legislature must prescribe the qualifications for appointive office.

Plaintiffs' contention that the new method of judicial review which the amendments provide is grossly inadequate may be disposed of shortly. The argument is advanced here, as it was in the *Zarn* case, that the notice provisions of section 18, relating to the public hearing upon the development plan and the issuance or denial of a certificate of convenience or necessity, are inadequate. This issue was presented directly and decided adversely to plaintiffs in *Zarn* v. *City of Chicago*, 389 Ill. 114, 129-132. The statutory provisions are unchanged, and we adhere to our conclusions in that case.

In addition, plaintiffs stress the fact that review of the decisions of the Redevelopment Corporation, effective July 1, 1950, is to be pursuant to the Administrative Review Act. Plaintiffs characterize such review as "severely restricted, for the Court is limited to consideration of the record of proceedings before the Commission and cannot hear any

new or additional evidence in opposition to the Commission's determinations." A complete answer to this contention is that the 1953 amendments effected no substantial change in the method of judicial review. Sections 19 and 30 of the original law each provided that no new or additional evidence could be introduced upon the review by the circuit court and that, in the event of failure to appeal from the order of the commission, there could be no trial of the merits of such controversy by any court to which application might be made to enforce such order of the commission or in any other judicial proceedings. Ill. Rev. Stat. 1949, chap. 32 pars. 550-19, 550-30.

Indeed, plaintiffs themselves recognize that no substantive change in judicial review was effected, submitting in their reply brief that "the amended review provisions must be considered in the light of the new definitions of crucial terms in the Act." It is clear that plaintiffs' entire argument on this point is predicated upon a theory which we have rejected,—that the new definitions involve an unlawful delegation of legislative power without definite standards. The method of judicial review prescribed by the statute is sufficient. See *Zurn* v. *City of Chicago*, 389 Ill. 114.

As originally enacted, section 42 of the Neighborhood Redevelopment Corporation Law provided that, before instituting condemnation proceedings, a Redevelopment Corporation was required to submit proof to the Commission that it had acquired by purchase, or had secured options to purchase, 60

percent or more of the land within the development area. This section was amended in 1953 to provide as an alternative that the corporation may submit proof that the owners of 60 percent or more in area of the land within the development area have "assented to and consented to be bound by the terms and provisions of the Development Plan of the Neighborhood Redevelopment Corporation as to themselves and their property." Plaintiffs contend that section 42, as amended, improperly delegates legislative power to property owners.

What the General Assembly has done is to authorize redevelopment corporations to exercise the right of eminent domain upon certain prescribed conditions. (*Zurn* v. *City of Chicago*, 389 Ill. 114). The conditions both as originally stated and as amended, appear designed to insure the likelihood that a plan can be successfully implemented before the power of eminent domain is permitted to be exercised. In so providing the legislature has not delegated its power to make the law. The legislature has made the law, has provided for the creation and regulation of Redevelopment Corporations, has provided what powers such corporations may and may not exercise, and has provided that they may exercise the power of eminent domain upon certain prescribed conditions. It is settled that the legislature may lawfully enact a law, the operation of which depends upon a contingent event. This court has stated that "* * * nothing is better settled than that the operation and even remedial character of a perfect and complete law may, by

virtue of limitations contained in the law itself, based upon contingent extrinsic matters, be enlarged, diminished, or wholly defeated. Such laws, though adopted absolutely and perfect in all their parts, yet by their own limitations they are applicable to a hypothetical condition of things only, and which may or may not ever happen. That it is perfectly competent for the legislature to pass such laws is shown by long legislative experience, and a decided weight of judicial authority." (*Home Ins. Co.* v. *Swigert*, 104 Ill. 653, 665.) To the same effect are *People* v. *McBride*, 234 Ill. 146, 177; *People ex rel. Deneen* v. *Simon*, 176 Ill. 165; *People ex rel. Grinnell* v. *Hoffman*, 116 Ill. 587. This distinction was noted in *People ex rel. Chicago Dryer Co.* v. *City of Chicago*, 413 Ill. 315, 321, upon which plaintiffs rely. Section 42 is not invalid for the reason urged.

The contention that the 1953 amendments authorize the taking of private property for a private use in violation of constitutional limitations is disposed of by our opinion in *People* v. *City of Chicago*, No. 33236, decided this day, which holds that the Urban Community Conservation Act does not authorize the taking of private property for a private purpose. Our conclusion there is decisive of the identical contention made here, which is supported by essentially the same arguments.

When the 1953 amendments were enacted, the title of the Neighborhood Redevelopment Corporation Law was amended, by the addition of the words italicized, to read as follows: "An Act to provide

for the *prevention and* eradication of slum and blight areas and the *conservation*, rehabilitation and rebuilding thereof through the medium of neighborhood redevelopment corporations with powers of eminent domain." By their final contention, plaintiffs assert that the amended title is insufficient to embrace the 1953 amendments because it does not suggest provisions relating to the conservation, rehabilitation and rebuilding of areas other than slum and blight areas. The nub of the contention is that the word "thereof" refers to slum and blight areas only, and there is therefore nothing in the title referring to the conservation, rehabilitation and rebuilding of conservation areas. In our opinion, the addition of the words "prevention" and "conservation" to the title enlarged it sufficiently to include the slum prevention and conservation provisions incorporated in the body of the statute.

What is required is that the title of an act fairly indicate the general subject and reasonably cover all the provisions of the act, so as not to mislead either the legislature or the public. (*People* v. *Roche*, 389 Ill. 361; *People* v. *Tallmadge*, 328 Ill. 210; *People* v. *Stacker*, 322 Ill. 232. See: *People* v. *City of Chicago*, No. 33236, decided this day.) As amended, the title of the act fairly expresses as one of its objectives the prevention of slums. The provisions of the statute with respect to conservation areas are clearly germane to that objective. The constitution does not require that the title of an

act be expressed in the most precise phraseology. The amended title of the challenged statute would, we think, mislead no one.

The decree of the circuit court of Cook County is affirmed.

Decree affirmed.